

### 21.5 Assignments by Lenders

If any Lender assigns all or any of its rights and benefits under the Senior Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), then, unless and until the assignee has delivered:

- (a) a notice to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) confirming in favour of the Senior Secured Creditors that it shall be under the same obligations towards each of them as it would have been under if it had been an original party hereto as a Lender and to the relevant Facility Agreement as a Hotel Facility Lender, Project Facility Lender, Additional Lender or Revolving Credit Facility Lender (as the case may be); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, such assignee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

(whereupon such assignee shall become a party hereto as a "Lender" or thereto as a "Hotel Facility Lender", "Project Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender"), the Company and the Senior Secured Creditors shall not be obliged to recognise such assignee as having the rights against each of them which it would have had if it had been such a party hereto or thereto.

### 21.6 Transfers by Lenders

If any Lender wishes to transfer all or any of its rights, benefits and/or obligations under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents as contemplated in Clause 21.4 (*Assignment and Transfer by Lenders*), then such transfer shall only be effective if the procedure set out in this Clause 21.6 is complied with. Such transfer shall be effected by the delivery to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) of:

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

in which event, on the later of the Transfer Date specified in such Novation Certificate and the fifth Business Day after (or such earlier Business Day endorsed by the Intercreditor Agent on such Novation Certificate falling on or after) the date of delivery of such Novation Certificate and Finance Party Accession Undertaking to the Intercreditor Agent:

- 21.6.1 to the extent that in such Novation Certificate the Lender party thereto seeks to transfer by novation its rights, benefits and obligations under this Agreement and the corresponding rights, benefits and obligations under the other Senior Finance Documents, the Company and such Lender shall be released from further obligations towards one another under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents and their respective rights against one another shall be cancelled (such rights and obligations being referred to in this Clause 21.6 as "discharged rights and obligations");
- 21.6.2 each of the Company and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar the Company and such Transferee have assumed and/or acquired the same in place of such other party and such Lender;
- 21.6.3 the Agents, the GCLAs, such Transferee and the other Lenders shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party to this Agreement and the other relevant Senior Finance Documents as a Lender with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Agents, the GCLAs and the relevant Lender shall each be released from further obligations to each other under this Agreement and the other relevant Senior Finance Documents; and
- 21.6.4 such Transferee shall become a party hereto as a "Lender" and to the relevant Facility Agreement as a "Hotel Facility Lender", "Project Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender" (as the case may be).

**21.7 Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*), the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee of USD1,500.

**21.8 Disclosure of Information**

Any Senior Secured Creditor may disclose to any of its Affiliates and any other Person:

- 21.8.1 to (or through) whom such Senior Secured Creditor assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Senior Finance Documents;

21.8.2 in the case of a Lender, with (or through) whom such Lender enters into (or may potentially enter into) any sub-participation in relation to the Senior Finance Documents or any Obligor; or

21.8.3 to whom information may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement;

such information about any Obligor, the Projects and the Senior Finance Documents as such Senior Secured Creditor may consider appropriate, *provided* that the Person to whom such information is provided under sub-clause 21.8.1 or 21.8.2 first enters into a Confidentiality Undertaking (or, in the case of the Security Agent, the confidentiality undertaking referred to in clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority) and that the Company has received an original copy of such signed undertaking.

21.9 **Change of Facility Office**

Any Lender may change its Facility Office *provided* that the Company shall have no liability (or no increase in liability) under Clause 11 (*Tax gross-up and Indemnities*) or Clause 12 (*Increased costs*) which would not exist as at the date of such change but for such change, unless such change was requested by the Company pursuant to Clause 15 (*Mitigation by the Senior Secured Creditors*).

22. **HEDGING COUNTERPARTIES**

22.1 **Accession**

Each Hedging Counterparty shall execute and deliver to the Intercreditor Agent a Hedging Counterparty's Deed of Accession and shall execute and deliver to the Security Agent in accordance with the Deed of Appointment and Priority a Finance Party Accession Undertaking. A Hedging Counterparty may, at any time, assign all or any of its rights and benefits or transfer all or any of its rights, benefits and obligations under and in accordance with the Senior Finance Documents subject to delivery to the Intercreditor Agent of a duly completed:

- (a) Hedging Counterparty's Deed of Accession executed by the assignee or transferee; and
- (b) Finance Party Accession Undertaking executed by the assignee or transferee, the Hedging Counterparty, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

22.2 **Interest in the Security**

The obligations of the Company owed to each Hedging Counterparty shall be secured by the Security and each Hedging Counterparty shall be entitled to share in the Enforcement Proceeds in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

### 22.3 Voting rights

Nothing in this Clause 22 nor any other provisions of any Senior Finance Document shall be deemed to entitle any Hedging Counterparty in its capacity as such under any Hedging Agreement to exercise any voting, consent, approval or similar right under the Senior Finance Documents (other than the Hedging Agreements) including any right to participate in any Decision *provided* that:

22.3.1 each Hedging Counterparty shall have the right to participate in all Decisions after the occurrence of a Hedging Voting Right Event in relation to such Hedging Counterparty that is continuing; and

22.3.2 the consent of all Hedging Counterparties shall be required for any change to the matters referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) in the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) and for any amendment to Clause 33.6 (*Application of Enforcement Proceeds*) and this Clause 22.

### 22.4 Restrictions on Amendment

Each Hedging Counterparty agrees that, except with the prior written consent of the Intercreditor Agent, no amendment may be made to a Hedging Agreement to an extent which would result in:

22.4.1 any payment under that Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in that Hedging Agreement; or

22.4.2 the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of that Hedging Agreement; or

22.4.3 the Company becoming liable to make any payment under that Hedging Agreement in any currency other than in the currency provided for under the original provisions of that Hedging Agreement.

### 22.5 Restrictions on Termination

No Hedging Counterparty may terminate a hedging facility or close out any hedging transaction under a Hedging Agreement prior to its stated maturity except in accordance with the terms of the ISDA Master Agreement and the ISDA Schedule (each as may be amended pursuant to paragraph 4 of Schedule 8 (*Hedging Arrangements*)).

### 22.6 Termination at request of Intercreditor Agent

After a notice has been given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), a Hedging Counterparty shall, at the written request of the Intercreditor Agent, terminate the hedging facility or close out any hedging transaction under the Hedging Agreement to which it is party in accordance with the terms of such Hedging Agreement.

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23. **AGENTS AND GLOBAL COORDINATING LEAD ARRANGERS**

23.1 **Appointment and duties of the Agents**

23.1.1 Each of:

- (a) the Senior Secured Creditors appoints the Intercreditor Agent;
- (b) the Hotel Facility Lenders appoints the Hotel Facility Agent;
- (c) the Project Facility Lenders appoints the Project Facility Agent;
- (d) the Revolving Credit Facility Lenders appoints the Revolving Credit Facility Agent; and
- (e) the Additional Lenders appoints the Additional Lender Agent,

to act as its agent under and in connection with the Senior Finance Documents and irrevocably authorises it on its behalf to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the Senior Finance Documents, together with any other incidental rights, powers and discretions.

23.1.2 None of the Agents may begin any legal action or proceeding in the name of a Senior Secured Creditor (other than itself) without that Senior Secured Creditor's consent.

23.1.3 Each Agent has only those duties which are expressly specified in the Senior Finance Documents, and those duties are solely of a mechanical and administrative nature.

23.2 **Relationship**

23.2.1 The relationship between each Agent and the relevant Senior Secured Creditors is that of principal and agent only. Nothing in this Agreement constitutes any Agent as trustee or fiduciary for any other Person and no Agent need hold in trust any moneys paid to it for a Person or be liable to account for interest on those moneys except to the extent expressly stated in a Senior Finance Document.

23.2.2 No Agent shall in any respect be the agent of the Company by virtue of this Agreement.

23.2.3 No Agent shall be liable to the Company for any breach by any other Senior Secured Creditor of any Senior Finance Document or be liable to any other Secured Creditor for any breach by the Company of the Senior Finance Documents.

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**23.3 Role of the GCLAs**

Except as specifically provided in the Senior Finance Documents, none of the GCLAs has any obligations of any kind to any other Party under or in connection with any Senior Finance Document.

**23.4 Delegation**

Each Agent may act through its personnel and agents.

**23.5 Instructions**

23.5.1 Unless otherwise expressly provided in the Senior Finance Documents, the Intercreditor Agent shall act (and shall be fully protected if it so acts) in accordance with the instructions of the Required Lenders in connection with the exercise of any right, power or discretion under or in connection with the Senior Finance Documents.

23.5.2 Each Facility Agent shall be fully protected if it acts in accordance with the instructions of its Lending Group in connection with the exercise of any right, power or discretion under or in connection with any matter not expressly provided for in the Senior Finance Documents.

23.5.3 In the absence of such instructions each Agent may act, subject to the terms of the Senior Finance Documents, as that Agent, in its sole discretion, considers to be in the best interests of all the Senior Secured Creditors or, in the case of each Facility Agent, its Lending Group.

**23.6 Discretions**

Notwithstanding any provision of the Senior Finance Documents, each Agent may:

23.6.1 assume, unless it has, in its capacity as Agent, received written notice to the contrary from any other Party, that (a) any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) no Default has occurred, (c) no Obligor is in breach of or default under its obligations under the Senior Finance Documents and (d) any right, power, authority or discretion vested in the Senior Finance Documents upon the Required Lenders, a Lending Group, the Lenders or any other Person or group of Persons has not been exercised;

23.6.2 assume that (a) the Facility Office of each Lender is that notified to it by such Lender in writing and (b) the information provided by each Lender pursuant to Clause 29 (*Notices*) is true and correct in all respects until it has received from such Lender notice of a change to the Facility Office or any such information and act upon any such notice until the same is superseded by a further notice;

23.6.3 engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;

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- 23.6.4 rely as to any matters of fact which might reasonably be expected to be within the knowledge of an Obligor upon a certificate signed by or on behalf of such Obligor;
  - 23.6.5 rely upon any communication or document believed by it to be genuine;
  - 23.6.6 refrain from exercising any right, power or discretion vested in it as Agent under the Senior Finance Documents unless and until instructed as described in Clause 23.5 (*Instructions*) as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised;
  - 23.6.7 refrain from acting in accordance with any instructions to begin any action or proceeding arising out of or in connection with the Senior Finance Documents until it shall have received such security as it may require (whether by way of payment in advance or otherwise) for all costs, claims, losses, expenses (including legal fees) and liabilities which it shall or may expend or incur in complying with such instructions;
  - 23.6.8 refrain from acting where to do so would put it in breach of an applicable Legal Requirement;
  - 23.6.9 treat each Facility Agent as the duly appointed and authorised agent of the relevant Lenders until it receives written notice to the contrary from the relevant Lenders; and
  - 23.6.10 (in the case of the Intercreditor Agent) in applying any moneys received by it under any Security Document under Clause 33.6 (*Application of Enforcement Proceeds*), rely on any certificate made by the relevant Facility Agent or Hedging Counterparty as to the identity of, and the amounts owing to, any of the Senior Secured Creditors and shall be protected in so relying.

23.7 **Agents' Obligations**

23.7.1 Each Agent shall:

- (a) promptly inform each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the contents of any notice or document received by it pursuant to the terms of any Senior Finance Document in its capacity as Agent from the Security Agent or an Obligor under the Senior Finance Documents; and
- (b) promptly notify each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under the Senior Finance Documents of which such Agent has notice from any other party.

23.7.2 The Intercreditor Agent shall promptly inform the Security Agent of the occurrence of the Release Date.

**23.8 Excluded Obligations**

Notwithstanding anything to the contrary expressed or implied herein, none of the Agents nor any of the GCLAs shall:

- 23.8.1 be bound to enquire as to (a) whether or not any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) the occurrence or otherwise of any Default, (c) the performance by an Obligor of its obligations under the Senior Finance Documents or (d) any breach of or default by an Obligor of or under its obligations under the Senior Finance Documents;
- 23.8.2 be bound to account to any Senior Secured Creditor for any sum or the profit element of any sum received by it for its own account;
- 23.8.3 be bound to disclose to any other Person any information relating to any Obligor, any party to a Project Document or any of their respective related entities if (a) such Person, on providing such information, expressly stated to such Agent or, as the case may be, such GCLA, that such information was confidential or (b) such disclosure would or might in its opinion constitute a breach of any law or be otherwise actionable at the suit of any Person; or
- 23.8.4 be under any obligations other than those for which express provision is made herein or in any other Senior Finance Document to which such Agent or GCLA is a party.

**23.9 Exclusion of Liabilities**

None of the Agents and the GCLAs accepts any responsibility:

- 23.9.1 for the adequacy, accuracy and/or completeness of the Information Memorandum or any other information supplied by the Agents or the GCLAs, by an Obligor or by any other Person in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;
- 23.9.2 for the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; or
- 23.9.3 for the exercise of, or the failure to exercise, any judgement, discretion or power given to any of them by or in connection with the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, none of the Agents and the GCLAs shall be under any liability (whether in negligence or otherwise) in respect of such matters.

**3.10 No Actions**

Each of the Lenders and the Hedging Counterparties agrees that it shall not assert or seek to assert against any director, officer or employee of any of the Agents or any of the GCLAs any claim it might have against any of them.

**23.11 Business with the Obligors**

Each Agent and GCLA may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Obligors or their Affiliates.

**23.12 Resignation**

23.12.1 An Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving not less than 25 Business Days' prior notice to that effect to the Senior Secured Creditors and the Company, in which case:

- (a) the Required Lenders (in the case of the Intercreditor Agent) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Required Lenders and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Required Lenders may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent; and
- (b) the relevant Lending Group under a Facility (in the case of a Facility Agent for that Facility) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of such Lending Group and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Lending Group may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent.

23.12.2 If the Required Lenders have not, within 15 Business Days after notice of resignation, appointed a successor Intercreditor Agent which accepts the appointment, the outgoing Agent may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Intercreditor Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the Intercreditor Agent may appoint a successor Agent on the same terms and conditions as previously applied to it.

23.12.3 If a Lending Group has not, within 15 Business Days after notice of resignation appointed a successor Facility Agent which accepts the appointment, the outgoing Facility Agent may appoint a successor Facility Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be

subject to the prior agreement of the outgoing Facility Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the outgoing Facility Agent may appoint a successor Facility Agent on the same terms and conditions as previously applied to it.

- 23.12.4 If, at the time of expiry of the period specified in sub-clause 23.12.2 or, as the case may be, sub-clause 23.12.3 above, the outgoing Agent cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.5 If the Agent has not been paid an amount due to it under the Senior Finance Documents and gives notice thereof as its reason for resigning together with its notice pursuant to Clause 23.12.1, it shall not be obliged to appoint a successor. If, at the time of expiry of the period specified in clause 23.12.1, the Required Lenders or, as the case may be, the relevant Lending Group, cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.6 The resignation of an Agent and the appointment of any successor Agent shall both become effective only upon the successor Agent executing an Agent's Deed of Accession *provided* that, where the Agent has notified the reason for its resignation pursuant to Clause 23.12.5, its resignation shall become effective upon the expiry of the period notified by it pursuant to Clause 23.12.1. Upon the execution of an Agent's Deed of Accession, the successor Agent shall succeed to the position of the retiring Agent (as the case may be) under the Senior Finance Documents and the term "Agent" shall mean the successor Agent.
- 23.12.7 The Intercreditor Agent agrees that it shall, if so requested in writing by the Required Lenders, tender its resignation in accordance with this Clause 23.12.
- 23.12.8 Each Facility Agent agrees that it shall, if so requested in writing by its Lending Group, tender its resignation in accordance with this Clause 23.12.
- 23.12.9 Upon the appointment of a successor (or, as the case may be, its resignation becoming effective), the retiring Agent shall be discharged from any future (but not accrued) obligations in respect of the Senior Finance Documents but shall remain entitled to the benefit of Clause 13.2 (*Other Indemnities*) and sub-clauses 23.1, 23.2, 23.5.2, 23.5.3, 23.6.10, 23.8, 23.9, 23.10 and 23.15 of this Clause 23.

**23.13 Own Responsibility**

It is understood and agreed by each Senior Secured Creditor that at all times it has itself been, and shall continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Senior Finance Documents including, but not limited to:

- 23.13.1 the financial condition, creditworthiness, condition, affairs, status and nature of the Projects and each Obligor;
- 23.13.2 the legality, validity, effectiveness, adequacy and enforceability of the Senior Finance Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;
- 23.13.3 whether such Senior Secured Creditor has recourse, and the nature and extent of that recourse, against an Obligor or any other Person or any of their respective assets under or in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; and
- 23.13.4 the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Agents or the GCLAs, an Obligor, or by any other Person in connection with the Senior Finance Documents, the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, each Senior Secured Creditor acknowledges to the Agents and the GCLAs that it has not relied on and shall not hereafter rely on the Agents and the GCLAs or any of them in respect of any of these matters.

**23.14 Agency Division Separate**

In acting as Agent under the Senior Finance Documents, each of the Agents shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments and, notwithstanding the foregoing provisions of this Clause 23, any information received by some other division or department of such Agent may be treated as confidential and shall not be regarded as having been given to such Agent's agency division.

**23.15 Indemnity to Intercreditor Agent**

- 23.15.1 Each Senior Secured Creditor shall rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Senior Secured Creditors (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time

being, indemnify the Intercreditor Agent, within fifteen days of demand (accompanied by reasonable written certification), against cost, loss or liability incurred by the Intercreditor Agent (other than by reason of the fraud, negligence or wilful misconduct of the Intercreditor Agent) in acting as Intercreditor Agent in accordance with the terms of the Senior Finance Documents (unless the Intercreditor Agent has been reimbursed by, or indemnified to its satisfaction by, an Obligor pursuant to a Senior Finance Document or otherwise in writing). For the purposes of this Clause 23.15.1, each Hedging Counterparty shall, in respect of each Hedging Agreement entered into by it, be deemed to have made an Advance to the Company in an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

23.15.2 Clause 23.15.1 shall not apply to the extent that the Intercreditor Agent is otherwise actually indemnified or reimbursed by any Party under any other provision of the Senior Finance Documents.

23.15.3 Provided that the Company is required to reimburse or indemnify the Intercreditor Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Senior Secured Creditor, indemnify such Senior Secured Creditor in relation to any payment actually made by such Senior Secured Creditor pursuant to Clause 23.15.1 above.

#### 24. CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS

No provision of the Senior Finance Documents shall:

24.1.1 interfere with the right of any Senior Secured Creditor to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

24.1.2 subject to Clause 15 (*Mitigation by Senior Secured Creditors*), oblige any Senior Secured Creditor to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

24.1.3 oblige any Senior Secured Creditor to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

#### 25. SHARING AMONG THE SENIOR SECURED CREDITORS

##### 25.1 Payments to Senior Secured Creditors

If a Senior Secured Creditor (a "Recovering Senior Secured Creditor") receives or recovers any amount from an Obligor other than in accordance with the provisions of the Senior Finance Documents (excluding any such provision which permits the setting off of obligations owed by such Obligor against obligations owed to it by such Recovering Senior Secured Creditor but allowing, for the avoidance of doubt, any such provision in any Hedging Agreement permitting netting off between transactions under such Hedging Agreement) and applies that amount to a payment due under the Senior Finance Documents then:

25.1.1 the Recovering Senior Secured Creditor shall, within 5 Business Days, notify details of the receipt or recovery, to the Intercreditor Agent;

25.1.2 the Intercreditor Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Senior Secured Creditor would have been paid had the receipt or recovery been received and distributed in accordance with this Agreement, without taking account of any Tax which would be imposed on that Agent in relation to the receipt, recovery or distribution; and

25.1.3 the Recovering Senior Secured Creditor shall, within 10 Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent an amount (the "Sharing Payment") equal to such receipt or recovery less any amount which the Intercreditor Agent determines may be retained by the Recovering Senior Secured Creditor as its share of any payment to be made, in accordance with this Agreement.

**25.2 Redistribution of payments**

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Senior Secured Creditors (other than the Recovering Senior Secured Creditor) in accordance with this Agreement.

**25.3 Recovering Senior Secured Creditor's Rights**

25.3.1 On a distribution by the Intercreditor Agent under 25.2 (*Redistribution of payments*), the Recovering Senior Secured Creditor shall be subrogated to the rights of the Senior Secured Creditors which have shared in the redistribution.

25.3.2 If and to the extent that the Recovering Senior Secured Creditor is not able to rely on its rights under sub-clause 25.3.1 above, the Company shall be liable to the Recovering Senior Secured Creditor for a debt equal to the Sharing Payment which is immediately due and payable.

**25.4 Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Senior Secured Creditor becomes repayable and is repaid by such Recovering Senior Secured Creditor, then:

25.4.1 each Senior Secured Creditor which has received a share of such Sharing Payment pursuant to Clause 25.2 (*Redistribution of payments*) shall, upon request of the Intercreditor Agent, pay to the Intercreditor Agent for account of that Recovering Senior Secured Creditor an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Senior Secured Creditor for its proportion of any interest on the Sharing Payment which that Recovering Senior Secured Creditor is required to pay); and

25.4.2 that Recovering Senior Secured Creditor's rights of subrogation in respect of any reimbursement shall be cancelled and the Company shall be liable to the reimbursing Senior Secured Creditor for the amount so reimbursed.

**25.5 Exceptions**

This Clause 25 shall not apply to the extent that the Recovering Senior Secured Creditor would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

**25.6 Benefit**

The provisions of this Clause 25 are for the sole benefit of the Senior Secured Creditors and may be waived or amended by the Required Lenders without the consent of the Company provided there is no increase in the liability of the Company as a result.

**26. PAYMENT MECHANICS**

**26.1 Payments under the Senior Finance Documents**

**26.1.1 Prior to an Event of Default**

Unless and until an Event of Default has occurred and is continuing:

- (a) all payments to be made by the Company to or for the account of any Lender under the Facility Agreement to which that Lender is a party shall be made to the relevant Facility Agent under that Facility Agreement for the account of that Lender, in the manner stipulated in the relevant Facility Agreement; and
- (b) all payments to be made by a Lender under a Facility Agreement shall be made to the relevant Facility Agent, not later than the time (if any) specified in the relevant Facility Agreement, to its account at such office or bank as it may notify to that Lender from time to time for this purpose.

**26.1.2 After the occurrence of an Event of Default**

Subject to the Deed of Appointment and Priority, after the occurrence of an Event of Default that is continuing and unless the Intercreditor Agent agrees in writing that payment should continue to be made in accordance with sub-clause 26.1.1 (*Prior to an Event of Default*):

- (a) all payments to be made by the Company to or for the account of any Senior Secured Creditor or under any Senior Finance Document shall be made to the Intercreditor Agent (other than any such payments to be made to or for the account of the Security Agent which shall continue to be made to the Security Agent);
- (b) all payments to be made by any Lender under any Senior Finance Document (whether pursuant to Clause 25 (*Sharing Among the Senior Secured Creditors*) or otherwise) shall be paid to the Intercreditor Agent; and

- (c) all payments received by the Intercreditor Agent under this sub-clause 26.1.2 shall be distributed in accordance with Clause 33.6 (*Application of Enforcement Proceeds*) to the Person(s) specified therein or, where any such Person is a Lender, to the relevant Facility Agent for the account of that Lender.

**26.2 Payments by an Agent**

- 26.2.1 Save as otherwise provided herein, each payment received by an Agent as agent for or otherwise for the benefit of another Person shall, subject to Clause 26.3 (*Distributions to an Obligor*) and Clause 26.4 (*Clawback*), be made available by that Agent to the Person entitled to receive such payment for value the same day by transfer to such account of such Person with such bank in the principal financial centre of the country of the relevant currency as such Person shall have previously notified to that Agent.
- 26.2.2 A payment shall be deemed to have been made by an Agent on the date on which it is required to be made under the Senior Finance Documents if such Agent has, on or before that date, taken steps to make that payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Agent in order to make the payment.

**26.3 Distributions to an Obligor**

Each Agent may (with the consent of the relevant Obligor or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Senior Finance Documents or in or towards purchase of any amount of any currency to be so applied at a market rate of exchange in its usual course of business.

**26.4 Clawback**

- 26.4.1 Where a sum is to be paid to an Agent under the Senior Finance Documents for another Person, that Agent is not obliged to pay that sum to that Person until it has been able to establish to its satisfaction that it has actually received that sum.
- 26.4.2 If an Agent pays an amount to another Person and it proves to be the case that Agent had not actually received that amount, then the Person to whom that amount was paid by that Agent shall on demand refund the same to that Agent together with interest on that amount from the date of payment to the date of receipt by that Agent, calculated by that Agent to reflect its cost of funds.

**26.5 No Set-off by Obligors**

All payments to be made by an Obligor under the Senior Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**26.6 Business Days**

26.6.1 Any payment which is due to be made under any Senior Finance Document on a day that is not a Business Day shall be made on the next Business Day in the calendar month (if there is one) or the preceding Business Day (if there is not).

26.6.2 During any extension of the due date for payment of any principal pursuant to sub-clause 26.6.1 above, interest is payable on that principal at the rate payable on the original due date.

**26.7 Currency of account**

26.7.1 A repayment of an Advance or Unpaid Sum or a part of an Advance or Unpaid Sum shall be made in the currency in which the Advance or Unpaid Sum is denominated on its due date.

26.7.2 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

26.7.3 Each payment in respect of costs, expenses or Taxes under the Senior Finance Documents shall be made in the currency in which the costs, expenses or Taxes are incurred.

26.7.4 Any other amount payable under any of the Senior Finance Documents is, except as otherwise provided elsewhere in the Senior Finance Documents, payable in US dollars.

**27. SET-OFF**

Without prejudice to the provisions of Schedule 6 (*Accounts*) and subject to the terms of Clause 25 (*Sharing Among the Senior Secured Creditors*) and Clause 33 (*Intercreditor Arrangements*), a Senior Secured Creditor may, upon the occurrence of an Event of Default and for so long as it is continuing, set off any matured obligations owed by the Company under the Senior Finance Documents (to the extent beneficially owned by that Senior Secured Creditor) against any obligation (which, for the purpose of this provision only, shall be treated as due and payable, save for unmatured obligations under the Hedging Agreements) owed by that Senior Secured Creditor to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Secured Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**28. NON-RECOURSE LIABILITY**

Notwithstanding any provision in the Senior Finance Documents to the contrary no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Senior Secured Creditors for satisfaction of any of the obligations of any of the Obligors hereunder, and under the

other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

29. **NOTICES**

29.1 **Communications in Writing**

Any notice, demand or other communication (each, for the purposes of this Clause 29, a "communication") to be made under or in connection with the Senior Finance Documents shall be made in writing but, unless otherwise stated, may be made by fax or letter.

29.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Senior Finance Documents is:

29.2.1 in the case of the Company, each of the GCLAs, each of the Agents, each of the Lenders and each of the Hedging Counterparties party to the Common Terms Agreement Second Amendment Agreement, identified with its name on the signing pages thereto; and

29.2.2 in the case of each other Lender, each other Hedging Counterparty and each other Obligor, that notified in writing to the Intercreditor Agent prior to the date it becomes a party to the Senior Finance Documents,

or any substitute address, fax number or department or officer as the party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other parties, if a change is made by the Intercreditor Agent) by not less than 10 Business Days' notice.

29.3 **Delivery**

29.3.1 Any communication or document made or delivered by one Person to another under or in connection with the Senior Finance Documents shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

29.3.2 Any communication or document to be made or delivered to an Agent shall be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer specified as part of its address details provided under Clause 29.2 (*Addresses*) (or any substitute department or officer as that Agent shall specify for this purpose).

29.3.3 All notices to an Obligor shall be sent through a Facility Agent or the Intercreditor Agent (but always with a copy to the Intercreditor Agent). All notices from an Obligor under the Senior Finance Documents shall be sent to the Intercreditor Agent who shall distribute them to the Senior Secured Creditors.

**29.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 29.2 (*Addresses*) or changing its own address or fax number, the Intercreditor Agent shall notify the other parties.

**29.5 Electronic communication**

29.5.1 Any communication to be made between an Agent and a Lender or between an Agent and another Agent under or in connection with the Senior Finance Documents may be made by electronic mail or other electronic means, if that Agent and the relevant Lender or Agent:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

29.5.2 Any electronic communication made between an Agent and a Lender or another Agent shall be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to an Agent or by an Agent to another Agent only if it is addressed in such a manner as the relevant Agent shall specify for this purpose.

**29.6 Electronic supply of materials**

(a) The Company shall (and shall ensure that each other Obligor shall), unless otherwise requested by the Intercreditor Agent, provide to the Intercreditor Agent all information, documents and other materials that such Obligor is obligated to furnish to the Intercreditor Agent pursuant to the Senior Finance Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for

a new, or a conversion of an existing, Advance or other extension of credit (including any election of an interest rate or Interest Period relating thereto), (ii) relates to the payment of any principal or other amount due under any Senior Finance Document prior to the scheduled date therefor, (iii) provides notice of any Default under any Senior Finance Document, (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of any Senior Finance Document and/or any Advance or other extension of credit hereunder or (v) initiates or responds to legal process (all such non-excluded information being referred to herein collectively as the "Communications") by transmitting the Communications in an electronic/soft medium (provided such Communications contain any required signatures) in a format acceptable to the Intercreditor Agent to each of [michael.poon@sgcib.com](mailto:michael.poon@sgcib.com), [kenneth.choi@sgcib.com](mailto:kenneth.choi@sgcib.com) and [sunny.lui@sgcib.com](mailto:sunny.lui@sgcib.com) (or such other e-mail address or addresses designated by the Intercreditor Agent from time to time).

- (b) Each party hereto agrees that the Intercreditor Agent may make the Communications available to the any Senior Secured Creditor by posting the Communications on IntraLinks or another relevant website, if any, to which such Senior Secured Creditor has access (whether a commercial, third-party website or whether sponsored by the Intercreditor Agent) (the "Platform"). Nothing in this Clause 29.6 shall prejudice the right of the Intercreditor Agent to make the Communications available to any Senior Secured Creditor in any other manner specified in this Agreement or any other Senior Finance Documents.
- (c) Each Senior Secured Creditor agrees that e-mail notice to it (at the address provided pursuant to the next sentence and deemed delivered as provided in the next paragraph) specifying that Communications have been posted to the Platform shall constitute effective delivery of such Communications to such Senior Secured Creditor for purposes of this Agreement and the other Senior Finance Documents. Each Senior Secured Creditor agrees (i) to notify the Intercreditor Agent in writing (including by electronic communication) from time to time to ensure that the Intercreditor Agent has on record an effective e-mail address for such Senior Secured Creditor to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.
- (d) Notwithstanding Clause 29.6(e) below, each party hereto agrees that any electronic communication referred to in this Clause 29.6 shall be deemed delivered upon the posting of a record of such communication (properly addressed to such party at the e-mail address provided to the Intercreditor Agent) as "sent" in the e-mail system of the sending party or, in the case of any such communication to the Intercreditor Agent, upon the posting of a record of such communication as "received" in the e-mail system of the Intercreditor Agent; provided that if such communication is not so received by the Intercreditor Agent during the normal business hours of the Intercreditor Agent, such communication shall be deemed delivered at the opening of business on the next Business Day for the Intercreditor Agent.

- (e) Each party hereto acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Communications and the Platform are provided "as is" and "as available", (iii) none of the Intercreditor Agent, its affiliates nor any of their respective officers, directors, employees, agents, advisors or representatives (collectively, the "Intercreditor Parties") warrants the adequacy, accuracy or completeness of the Communications or the Platform, and each Intercreditor Party expressly disclaims liability for errors or omissions in any Communications or the Platform and (iv) no representation or warranty of any kind, express, implied or statutory, including any representation or warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Intercreditor Party in connection with any Communications or the Platform.

**29.7 English language**

29.7.1 Any notice given under or in connection with any Senior Finance Document must be in English.

29.7.2 All other documents provided under or in connection with any Senior Finance Document must be in English or, if not in English, and if so required by the relevant Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

**30. CALCULATIONS AND CERTIFICATES**

**30.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Senior Finance Document, the entries made in the accounts maintained by a Senior Secured Creditor are *prima facie* evidence of the matters to which they relate.

**30.2 Certificates and Determination**

Any certification or determination by a Senior Secured Creditor of a rate or amount under any Senior Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**30.3 Day count convention**

Any interest, commission or fee accruing under a Senior Finance Document shall accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days (where due in US dollars) and 365 days (where due in HK dollars).

**31. PARTIAL INVALIDITY**

If, at any time, any provision of the Senior Finance Documents is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

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**32. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Senior Secured Creditor, any right or remedy under the Senior Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Senior Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

**33. INTERCREDITOR ARRANGEMENTS**

**33.1 Notices of Required Decisions**

33.1.1 If, at any time, a matter requiring a Decision comes to the notice of a Senior Secured Creditor, that Senior Secured Creditor shall promptly inform the Intercreditor Agent and, where relevant, its Facility Agent in writing.

33.1.2 If, at any time, a matter requiring a Decision comes to the notice of the Intercreditor Agent, the Intercreditor Agent shall promptly notify in writing each Facility Agent (and, after the occurrence of a Hedging Voting Right Event in relation to any Hedging Counterparty that is continuing, that Hedging Counterparty) of that matter specifying:

- (i) whether the matter concerns a Fundamental Term and, if not, which Senior Secured Creditors may vote in respect of the Decision and the aggregate Voting Entitlement required for the Decision to be made;
- (ii) the date and time by which the Intercreditor Agent requires receipt of all votes in respect of the Decision (the "Decision Date"); and
- (iii) following a Hedging Voting Right Event, the identity of the relevant Hedging Counterparty.

**33.2 Notice of Votes**

Each Senior Secured Creditor shall copy notice of its vote to the Intercreditor Agent, to each Facility Agent and each Hedging Counterparty notified by the Intercreditor Agent pursuant to Clause 33.1.2(iii) (*Notices of Required Decisions*).

**33.3 Decisions under the Senior Finance Documents**

Subject to the other provisions of this Agreement, the exercise of any right, power, discretion or determination which has been delegated to the Intercreditor Agent under the Senior Finance Documents (save for any such right, power, discretion or determination to be exercised by any such party for its own account) shall require the consent or agreement of the Required Lenders *provided* that the Intercreditor Agent may exercise any such right, power, discretion or determination (including giving instructions to the Security Agent) without requiring any Decision which the Intercreditor Agent, acting reasonably, considers is a minor, administrative or technical matter which does not adversely affect the rights of the Senior Secured Creditors under the Senior Finance Documents.

#### 33.4 Restrictions On Remedies

Subject to this Clause 33 (*Intercreditor Arrangements*), no Senior Secured Creditor may, at any time:

- 33.4.1 set off, or purport to set off, at any time, any amount owing to it under the Senior Finance Documents against any amount payable by it to an Obligor (except that any Hedging Counterparty may net off between transactions under a single Hedging Agreement);
- 33.4.2 take any action or commence any legal proceedings of whatsoever nature against an Obligor under or in respect of a Senior Finance Document to which that Obligor is a party including taking any steps or legal proceedings for the winding-up, dissolution or administration of any of the Obligors or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of any of the Obligors or of any or all of its assets or revenues; or
- 33.4.3 foreclose on, or enforce or seek an order of the court to enforce all or any of the Security.

#### 33.5 Notice of Default

- 33.5.1 If any Lender has actual knowledge of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, its Facility Agent in writing.
- 33.5.2 If any Facility Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, each Lender in its Lending Group in writing.
- 33.5.3 If the Intercreditor Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall notify each Facility Agent and each Hedging Counterparty in writing and, in the case of an Event of Default, it shall issue a notice under Clause 33.1 (*Notices of Required Decisions*) in respect of that Event of Default.

#### 33.6 Application of Enforcement Proceeds

Following the delivery of an Enforcement Notice, all Enforcement Proceeds paid to the Intercreditor Agent in accordance with the Deed of Appointment and Priority shall be applied by it (together with any other payments received by it pursuant to Clause 26.1.2 (*Payments under the Senior Finance Documents*)) in the following order:

- (i) first, in payment of all costs and expenses incurred by or on behalf of the Intercreditor Agent in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Intercreditor Agent;

- (ii) second, in payment *pro rata* of all costs and expenses incurred by or on behalf of the Facility Agents in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Facility Agent seeking recovery;
- (iii) third, in payment *pro rata* of all amounts paid by the Senior Secured Creditors under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (iv) fourth, in payment *pro rata* of all amounts paid by the Hotel Facility Lenders under clause 15.3 (*Indemnity to Hotel Facility Agent*) of the Hotel Facility Agreement or the Project Facility Lenders under clause 15.3 (*Indemnity to Project Facility Agent*) of the Project Facility Agreement or the Revolving Credit Facility Lenders under clause 15.3 (*Indemnity to Revolving Credit Facility Agent*) of the Revolving Credit Facility Agreement or the Additional Lenders under the equivalent provisions of the Additional Lender Facility Agreement in respect of indemnities to the Additional Lender Agent but which, in each case, have not been reimbursed by the Company;
- (v) fifth, in payment *pro rata* of all costs and expenses incurred by or on behalf of each Senior Secured Creditor in accordance with the Senior Finance Documents in connection with such enforcement and which have been certified, in writing, as having been incurred by the Senior Secured Creditor seeking recovery;
- (vi) sixth, in payment *pro rata* of all accrued and unpaid fees owing to the Agents under the Senior Finance Documents;
- (vii) seventh, in payment *pro rata* of all accrued and unpaid fees and commissions due to the Lenders under the Senior Finance Documents;
- (viii) eighth, in payment *pro rata* of all accrued but unpaid interest (including default interest) due under the Facility Agreements and all sums due under the Hedging Agreements;
- (ix) ninth, in payment *pro rata* of all principal instalments due under the Facility Agreements;
- (x) tenth, in payment *pro rata* of all other amounts owing to the Senior Secured Creditors due and payable under the Senior Finance Documents; and
- (xi) eleventh, in payment of the surplus (if any) to the Security Agent in accordance with the Deed of Appointment and Priority or to its order, *provided that*, following the giving of any notice by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), the amounts referred to in paragraphs (viii) and (ix) above shall rank *pari passu*.

**33.7 Representations and Warranties**

On the Second Amendment Signing Date and on the Effective Date, each Senior Secured Creditor party hereto represents and warrants to the other Senior Secured Creditors Party hereto that:

33.7.1 it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;

33.7.2 it has power to enter into and has duly authorised the execution, delivery and performance of this Agreement;

33.7.3 the obligations expressed to be assumed by it hereunder are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and

33.7.4 it is not the beneficiary of any Liens in respect of any Financial Indebtedness owed to it by the Company other than under the Senior Finance Documents.

33.8 The provisions of this Clause 33 (*Intercreditor Arrangements*) are for the sole benefit of the Senior Secured Creditors and may be waived or amended without the consent or agreement of the Company provided there is no increase in the liability of the Company as a result.

**34. AMENDMENTS AND WAIVERS**

**34.1 Amendment and waiver of common terms**

Subject to Clause 25.6 (*Benefit*) and to Clause 34.2 to Clause 34.4 below, any term of, or matter dealt with under, this Agreement and any other Senior Finance Document may be amended, waived or supplemented with the agreement of the Company and/or the other Obligors which are a party to that Senior Finance Document and/or, as the case may be, the Required Lenders.

**34.2 Amendment and waiver of Facility Agreements**

Subject to Clause 34.3 and Clause 34.4 below, any term of, or matter dealt with under, a Facility Agreement may be amended, waived or supplemented with the agreement of the Company and/or, as the case may be, the required Senior Secured Creditors as specified in that Facility Agreement.

**34.3 Amendment and waiver of Fundamental Terms**

A Fundamental Term may only be amended or waived by agreement between the Obligors which are a party to the Senior Finance Document which contains that Fundamental Term and each Lender (and, in the case of the provisions referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) of the definition of Fundamental Term, each Hedging Counterparty).

**34.4 Amendment and waiver affecting Agents**

An amendment or waiver of any term of the Senior Finance Documents, which relates to the rights and/or obligations of any Agent may not be effected without the prior written consent of that Agent.

**35. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

**36. LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

**37. GOVERNING LAW**

This Agreement shall be governed by English law.

**38. JURISDICTION**

**38.1 Jurisdiction of English courts**

38.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a "Dispute").

38.1.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.

38.1.3 This Clause 38.1 is for the benefit of the Senior Secured Creditors only. As a result, no Senior Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Senior Secured Creditors may take concurrent proceedings in any number of jurisdictions.

**38.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

38.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

38.2.2 agrees that failure by a process agent to notify the Company of the process shall not invalidate the proceedings concerned.

39. CONFIDENTIALITY

Subject to Clause 40 (*Gaming Authorities*), each of the Senior Secured Creditors agrees to keep confidential all non-public information of a proprietary or confidential nature provided to it by any Obligor pursuant to this Agreement, *provided* that nothing herein shall prevent any Senior Secured Creditor from disclosing any such information:

- (a) to any other Senior Secured Creditor, or any Affiliate thereof that is bound by confidentiality obligations;
- (b) to any other Person pursuant to Clause 21.8 (*Disclosure of Information*) or clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority;
- (c) to any of its or its Affiliates' employees, directors, agents, auditors, attorneys, accountants and other professional advisors who or that is bound by confidentiality obligations;
- (d) upon the request or demand of any Governmental Authority having jurisdiction over it;
- (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement or the rules of any stock exchange on which the shares or other securities of such Senior Secured Creditor or any Affiliate thereof are listed or by any other competent supervisory or regulatory body;
- (f) if required to do so in connection with any litigation or similar proceeding;
- (g) that has been publicly disclosed other than in breach of this Clause; or
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document.

40. GAMING AUTHORITIES

Each of the Senior Secured Creditors agrees to cooperate, having regard to its internal procedures and policies, with the reasonable requests of any and all gaming authorities in connection with the administration of their regulatory jurisdiction over the Company or any Obligor, to the extent not inconsistent with any applicable legal, regulatory or contractual restrictions (including any duties of confidentiality) or the terms of the Senior Finance Documents, *provided* that the Senior Secured Creditors are indemnified for any cost, loss or liabilities incurred in connection with such cooperation.

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**SCHEDULE 1**

**THE LENDERS AND HEDGING COUNTERPARTIES**

**Part A**

**Hotel Facility Lenders**

As set out in the Lender List.

**Part B**

**Project Facility Lenders**

As set out in the Lender List.

**Part C**

**Revolving Credit Facility Lenders**

As set out in the Lender List.

**Part D**

**Hedging Counterparties**

Banc of America Securities Asia Limited

Deutsche Bank AG

Société Générale

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## SCHEDULE 2

### CONDITIONS PRECEDENT

#### Part A

##### Conditions Precedent to the CP Satisfaction Date

THE CONDITIONS PRECEDENT SET OUT IN PART A OF THIS SCHEDULE 2 (CONDITIONS PRECEDENT) HAVE BEEN RECEIVED IN FORM AND SUBSTANCE ACCEPTABLE TO THE INTERCREDITOR AGENT OR OTHERWISE WAIVED.

#### 1. Project Documents

(a) Receipt by the Intercreditor Agent and the Technical Adviser of:

- (i) a list setting out the title, date, parties and subject matter of each Project Document entered into as of the CP Satisfaction Date with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of "cost plus" contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount of less than USD5,000,000 or its equivalent; and
- (ii) a copy of any other Project Document and each Affiliate Agreement entered into as of the CP satisfaction Date duly executed by all parties thereto,

each certified by a Responsible Officer of the Company to be true, complete and up-to-date, the Project Documents and Affiliate Agreements to be in full force and effect, the Project Documents are consistent with the Project Budget, the Project Schedule and the Plans and Specifications and, in the case of each Affiliate Agreement, the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*).

- (b) (i) Each Major Project Document has been duly authorised, executed and delivered by the parties thereto and duly filed, recorded, stamped and registered as necessary; and
- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Major Project Document is in full force and effect accordingly.
- (c) The Notice to Proceed and the Prime Contractor's Performance Bonds (in an aggregate amount of not less than USD45,722,399) have been duly issued in accordance with the terms of the Construction Contract.

#### 2. Senior Finance Documents

(a) Receipt by the Intercreditor Agent of an original of each of the following Senior Finance Documents duly executed by the parties thereto:

- (i) each Facility Agreement;

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- (ii) the Common Terms Agreement;
  - (iii) each Security Document (in the case of any Operating Account referred to in paragraphs (b), (c) or (d) of the definition thereof or any Reinsurance, required to be entered into prior to the CP Satisfaction Date and; in the case of the Wong Consent, the Intercreditor Agent shall accept a notarised copy of such document in lieu of the original in satisfaction of the requirements in respect thereof under this paragraph 2(a)(iii));
  - (iv) any other Senior Finance Documents (other than any Ancillary Finance Document) entered into prior to the CP Satisfaction Date; and
  - (v) any other document entered into which the Intercreditor Agent and the Company agree prior to the CP Satisfaction Date to designate as a Senior Finance Document.
- (b) Each of the Ancillary Finance Documents has been duly executed by the parties thereto.
- (c) (i) Save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors, the Performance Bond Provider and the other Major Project Participants as are party thereto and duly filed, notified, recorded, stamped and registered as necessary;
- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in this sub-paragraph (c)) is in full force and effect accordingly; and
- (iii) none of such of the Obligors, the Performance Bond Provider or the other Major Project Participants as is party to any such Senior Finance Document is or, but for the passage of time and/or giving of notice will be, in breach of any obligation thereunder.

### 3. Advisers' Reports and Certificates

Receipt by the Intercreditor Agent of the following reports and other documents and; in the case of each report, confirmed by the relevant adviser to be the final report prior to the CP Satisfaction Date:

- (a) the revised Technical Adviser's report in relation to the Projects (including confirmation that the Projects constitute Category C projects under the Equator Principles);

- (b) the revised Insurance Adviser's report in relation to the Insurances;
- (c) the revised Market Adviser's report in relation to the Projects; and
- (d) the revised Financial Model in relation to the Projects.

4. **Approved List**

Receipt by the Intercreditor Agent of a copy of the agreement between the GCLAs and the Company approving the Approved List.

5. **Due establishment, authority and certification**

- (a) In relation to the Company, receipt by the Intercreditor Agent of a certificate in substantially the form set out in Part C (*Form of Company's Due Establishment CP Satisfaction Date Certificate*) of this Schedule 2 signed by a Responsible Officer of the Company and which:
  - (i) attaches a copy of the Company's Governing Documents; and
  - (ii) attaches a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents.
- (b) In relation to each of the Wynn Obligors and the other Major Project Participants (other than the Macau SAR and the Persons referred to in subparagraph 5(c) below), receipt by the Intercreditor Agent of a certificate signed by a Responsible Officer of each such Person in substantially the form set out in Part D (*Form of Major Project Participant's CP Satisfaction Date Certificate*) of this Schedule 2 attaching copies of:
  - (i) its Governing Documents; and
  - (ii) a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by it pursuant thereto.
- (c) In relation to the issuer of the Prime Contractor's Performance Bond and Banco Nacional Ultramarino, S.A. in its capacity as the Performance Bond Provider, party to the Performance Bond Facility Agreement and Second Ranking Finance Party (as defined in the Deed of Appointment and Priority), receipt by the Intercreditor Agent of evidence (which may comprise a copy of the relevant portion of such Person's signature book or equivalent) confirming such Person's approval of the execution, delivery and performance of the Transaction Documents to which it is party and authorisation of the Person or Persons who have signed such Transaction Documents on its behalf to do so.

6. Project Documents and Permits

Receipt by the Intercreditor Agent of a certificate, in substantially the form set out in Part G (*Form of Company's CP Satisfaction Date Certificate*) of this Schedule 2 (the "Company's CP Satisfaction Date Certificate") signed by a Responsible Officer of the Company and which, amongst other things:

- (a) certifies that copies of documents delivered in satisfaction of other conditions precedent in this Part A remain, save to the extent of any subsequent amendments made in accordance with the Senior Finance Documents, true, complete and up-to-date copies in full force and effect as at the CP Satisfaction Date;
- (b) attaches copies of any such amendments referred to in sub-paragraph (a) above and certifies that such copies are true, complete and up-to-date and in full force and effect as at the CP Satisfaction Date; and
- (c) confirms that:
  - (i) all Permits described in Part A of Schedule 12 (*Permits*) shall have been issued and be in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated under the Senior Finance Documents and all applicable appeal periods with respect thereto shall have expired;
  - (ii) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) the Company is not aware of any facts or circumstances which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required; and
  - (iii) all other Permits have been obtained or effected to the extent they are required as of the date of the certificate and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such date will not be obtained when they are required.

and, in the case of the Permits described in Part A of Schedule 12 (*Permits*), attaching a copy of each such Permit (other than the Permit referred to in paragraph 8(iv) thereof, which it is acknowledged is comprised in the consent acknowledged by the Macau SAR Government in paragraph 3 of the Gaming Concession Consent Agreement).

7. [Not used]

**Security**

Receipt by the Intercreditor Agent of evidence that:

- (a) save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Security Document has been duly filed, notified, recorded, stamped and registered as necessary and all other actions necessary in the reasonable opinion of the Intercreditor Agent or the Security Agent to perfect the Security have been carried out; and
- (b) the Securities Account has been established in accordance with the Wynn Resorts Support Agreement and is fully funded as provided therein.

9. **Insurance**

- (a) Receipt by the Intercreditor Agent of a certificate addressed to it from the Insurance Adviser in substantially the form set out in Part E (*Form of Insurance Adviser's CP Satisfaction Date Certificate*) of this Schedule 2 certifying that all Construction Period Insurances required by the Senior Finance Documents to be in effect at the CP Satisfaction Date are in full force and effect and all premia (if any) due and payable as at the CP Satisfaction Date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*).
- (b) Receipt by the Intercreditor Agent of certified copies of all insurance policies, updates, cover notes or insurance slips then available in respect of Insurances then required to be maintained by the Company.
- (c) Receipt by the Intercreditor Agent of a Reinsurance Broker's Letter of Undertaking from each of the brokers referred to in paragraph 2.2 of Schedule 7 (*Insurance*) through whom Reinsurances have been effected.
- (d) Receipt by the Intercreditor Agent of confirmation from the Licensor that:
  - (i) the Insurances set out in Schedule 7 (*Insurance*) satisfy the insurance requirements set out in Section 8.01 of the IP Agreement; and
  - (ii) the insurers with whom such Insurances are effected are acceptable to the Licensor.

10. **Accounts**

Each of the Accounts specified in paragraph 1.1 of Schedule 6 (*Accounts*) has been established.

**11. Financials**

Receipt by the Intercreditor Agent of:

- (a) pro forma statement of the Company's assets and liabilities as at a date not more than one month prior to the CP Satisfaction Date; and
- (b) the most recent quarterly and annual financial statements of the type and in respect of the Persons specified in paragraph 1 of Part A of Schedule 5 (*Covenants*), together with certificates from a Responsible Officer of each such Person certifying such financial statements and stating that no material adverse change in the assets, liabilities, operations or financial condition of each such Person has occurred since the dates of the respective financial statements, except as otherwise provided in such certificate.

**12. Process agents**

Where such appointment is required under any Senior Finance Document, process agent acceptance of its appointment by the Company and each of such of the other Obligors, the Performance Bond Provider and the other Major Project Participants as is party to such Senior Finance Document for the acceptance of legal proceedings.

**13. Specimen signatures**

Receipt by the Intercreditor Agent of specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

**14. Legal opinions**

Receipt by the Intercreditor Agent of legal opinions from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Mr Alexandre Correia da Silva, Macanese legal adviser to the Company;
- (c) Lovells, English legal advisers to the Company in relation to the Major Project Documents governed by English law and referred to in subparagraphs (c) and (d) of the definition thereof;
- (d) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (e) Schreck Brignone, Nevada legal adviser to Wynn Resorts;
- (f) Mann and Partners, Isle of Man legal adviser to the Senior Secured Creditors;
- (g) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors;
- (h) Clifford Chance, English legal advisers to the Senior Secured Creditors;
- (i) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to Leighton Contractors (Asia) Limited;

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- (j) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China State Construction Engineering (Hong Kong) Limited;
  - (k) Ms Elisa Costa, Macanese legal adviser to China Construction Engineering (Macau) Company Limited;
  - (l) Mallesons Stephen Jaques, Australian legal advisers to Leighton Holdings Limited;
  - (m) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China Overseas Holdings Limited;
  - (n) Skadden, Arps, Slate, Meagher & Flom LLP, New York legal advisers to the Company;
  - (o) Mr Leonel A. Alves, Macanese legal adviser to Banco Nacional Ultramarino, S.A.; and
  - (p) Mr Leonel A. Alves, Macanese legal adviser to Companhia de Seguros de Macau, S.A.;

or, save in the case of sub-paragraphs (a), (b), (g), (h), (n), (o) and (p), such other lawyers or law firms as may be reasonably acceptable to the Intercreditor Agent.

**15. Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Part A; and
- (b) all fees, costs and expenses due to the Secured Creditors (including all amounts payable pursuant to any Fee Letter) and their advisers under the Senior Finance Documents on or before the CP Satisfaction Date,

have been paid or shall be paid out of the proceeds of the Initial Advance (to the extent that such amounts have been duly invoiced).

**16. Performance Bond**

Receipt by the Intercreditor Agent of evidence that the Concession Contract Performance Bond has been issued under the Performance Bond Facility as required by Article 61 of the Concession Contract.

**17. Concession Contract**

(a) Receipt by the Intercreditor Agent of evidence that:

- (i) the capital requirement under Article 15 of the Concession Contract has been complied with;

- (ii) the procedural requirements under Article 16 of the Concession Contract relevant to the creation of security over shares have been complied with;
  - (iii) the Company has notified the Macau SAR regarding the Facilities and the Security granted in favour of the Secured Creditors and produced copies of the Senior Finance Documents to the Macau SAR pursuant to Articles 34(2) and (3) of the Concession Contract;
  - (iv) expenditure of the total Project Costs referred to in the Project Budget which will be included in the calculation of the investment amount of MOP 4 billion will cause the Company to satisfy the requirement under the Concession Contract of expending MOP 4 billion within seven years after the date of the Concession Contract;
  - (v) legislation has been enacted by the Macau SAR which provides for casino operators such as the Company to be the grantors of credit to casino patrons;
  - (vi) the letter agreements dated 1 May 2002 between the Company and Banco Nacional Ultramarino and the Company and the Macau SAR in relation to the termination of the Concession Contract are of no force or effect; and
  - (vii) each area in which any operation of casino games of chance or other forms of gaming will be carried out following the opening of the Original Project has been classified by the Macau SAR as a casino or gaming zone in accordance with article 9 of the Concession Contract.
- (b) Receipt by the Intercreditor Agent of copies of all documents submitted to the Macau SAR as required under Article 21 of the Concession Contract and evidence reasonably satisfactory to the Intercreditor Agent that approval of the Company's delegation of management authority (including the appointment of the executive director, the scope of power of the executive director and term of authorisation) has been granted by the Macau SAR pursuant to Article 21 of the Concession Contract.
- (c) Receipt by the Intercreditor Agent of a letter from Macau SAR in relation to the granting of extension of time for completion of the Projects from 31 December 2006.

**18. Land and Land Concession Contract**

Receipt by the Intercreditor Agent of evidence that:

- (a) the Land Concession Contract is registered with the Macau Real Estate Agency;
- (b) the Land Concession Contract has been published in the Official Bulletin; and
- (c) the amount payable to Sociedade de Empreendimentos Nam Van S.A.R.L. for the surrendering by Sociedade de Investimento Imobiliario Hang Keng Van, S.A.R.L., Sociedade de Investimento Imobiliario Lok Keng Van, S.A.R.L. and Sociedade de Investimento Imobiliario Hei Keng Van, S.A.R.L. of their respective interests in the land registered with the Macau Real Estate Registry with registration numbers 22322, 22324 and 22325 does not exceed MOP 140,000,000.

**19. Auditors**

Receipt by the Intercreditor Agent of evidence that the Company has appointed the Auditors and the Auditors have accepted such appointment.

**20. Continued Appointment of Advisers**

The Insurance Adviser and the Technical Adviser have been appointed to act after the Signing Date in accordance with a scope of work as agreed by the Company and the Intercreditor Agent.

**21. No Material Adverse Effect**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that, as at the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

**22. Projections**

Receipt by the Intercreditor Agent of Projections for the Company for the period from 1 July 2007 to 31 December 2008 and which:

- (a) demonstrate compliance with paragraph 1 of Part B of Schedule 5 (*Covenants*);
- (b) otherwise comply with the requirements of paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

**23. Litigation**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that no action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor, the Performance Bond Provider or other Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order to be issued shall be pending or noticed with respect to any action, suit or proceeding if the same reasonably could be expected to have a Material Adverse Effect.

**24. Project Budget**

Receipt by the Intercreditor Agent at or prior to the Expansion Signing Date of a budget in the form of Schedule 13 (*Form of Project Budget*) which:

- (a) includes such other information and supporting data as any of the Senior Secured Creditors or the Technical Adviser may reasonably require; and
- (b) demonstrates, without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities, no Forecast Funding Shortfall.

**25. Project Schedule**

Receipt by the Intercreditor Agent at or prior to the Expansion Signing Date of a schedule for construction and completion of the Projects in the Agreed Form which demonstrates that Substantial Completion will occur and the Opening Conditions specified in paragraph (a) of the definition thereof will have been satisfied on or before the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

**26. Schedule of Values**

Receipt by the Intercreditor Agent of the "Expansion Project Schedule of Values" submitted and approved in accordance with section 5.1 of the Construction Contract and the "Original Project Schedule of Approved Values" (each as defined in the Construction Contract).

**27. Representations and Warranties**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that the representations and warranties of:

- (a) the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) or in any of the other Transaction Documents is true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
- (b) to the Company's knowledge, the Performance Bond Provider, any Obligor and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents is

true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), unless the failure of any such representation and warranty referred to in this subparagraph (b) to be true and correct could not reasonably be expected to have a Material Adverse Effect.

**28. Plans and Specifications**

The Company shall have delivered to the Technical Adviser or (on such terms as the Technical Adviser may reasonably require) made available to it in Hong Kong or Macau all plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects.

**29. PASA and IP Agreement**

- (a) The PASA and PASA Direct Agreement have been entered into with Wynn Design & Development, LLC and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by Wynn Design & Development, LLC into the PASA and PASA Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (b) The IP Agreement and IP Direct Agreement have been entered into with Wynn Resorts and Wynn Resorts Holdings, LLC as Licensor and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by Wynn Resorts and Wynn Resorts Holdings, LLC into the IP Agreement and the IP Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (c) The Licensor has acceded to the Sponsors' Subordination Deed in accordance with the terms thereof.

**30. Shareholder Reorganisation**

- (a) Receipt by the Intercreditor Agent of a Substantial Shareholder's Undertaking in form and substance satisfactory to it from each Substantial Shareholder (if any) as at the CP Satisfaction Date.
- (b) Receipt by the Intercreditor Agent of a Relevant Party's Undertaking in form and substance satisfactory to it from each Relevant Party (if any) as at the CP Satisfaction Date.
- (c) Receipt by the Intercreditor Agent of evidence that, as at the CP Satisfaction Date, all shares in Wynn Holdings not legally and beneficially owned by Wynn International as at the Signing Date are either legally and beneficially owned by Wynn International or their original owners (direct and indirect) as at the Signing Date.

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Part B

**1) Conditions Precedent to each Advance under the Term Loan Facilities**

**1. No Default**

No Default shall have occurred and be continuing.

**2. Representations and Warranties**

The representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company pursuant to Clause 17.2 (*Timing*) are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date.

**3. Sufficiency of Funds; Project Schedule Prior to the Expansion Opening Date**

Solely with respect to the period prior to the Expansion Opening Date, certification by a Responsible Officer of the Company that it has sufficient Funds to achieve Substantial Completion of the Expansion.

**4. Advance Request and Certificate**

Receipt by the Intercreditor Agent and the relevant Facility Agent of an Advance Request containing all attachments, exhibits and certificates required thereby, all appropriately completed and duly executed by a Responsible Officer of the Company, including:

- (a) solely with respect to the period prior to the Expansion Opening Date, a statement of the specific purposes to which each Advance shall be applied, including:
  - (i) whether payment (or refinancing of payment) for Hotel Project Costs or other Project Costs, for general corporate purposes, for the Diamond Expansion, whether for variations to Project Works or otherwise permitted pursuant to paragraph 15 of Part B of Schedule 5 (*Covenants*) and, where for refinancing of payment the original source of funds for such payment; and
  - (ii) a break down by Line Item of each such category of Project Costs supported:
    - (A) in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request; and
    - (B) in the case of any progress payment claimed pursuant to the Construction Contract, to the reasonable satisfaction of the Intercreditor Agent, by the relevant approved "Application for Progress Payment" and "Contractor's Certificate" (each as defined in the Construction Contract) and supporting documentary evidence delivered by the Prime Contractor in accordance with article V of the Construction Contract attached to the Advance Request;

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- (b) solely with respect to the period prior to the Expansion Opening Date, insofar as any previous Advance was requested for the purpose of payments which, at the time of its Advance Date, were not yet payable, a statement of such payments made since the last Advance Request supported, in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request; and
  - (c) solely with respect to the period prior to the Expansion Opening Date, certification that each Advance is required for the purpose specified.

5. **Adviser's Certificates**

- (a) Solely during the period prior to the Expansion Opening Date, receipt by the Intercreditor Agent by not later than 3:00 p.m. on the fifth Business Day prior to the proposed Advance Date of a certificate from the Technical Adviser in substantially the form set out in Part F (*Form of Technical Adviser's Advance Certificate*) of this Schedule 2 (the "Technical Adviser's Advance Certificate") certifying in connection with the Advance Request and any amendment thereto made pursuant to Clause 3.1, (*Drawdown Conditions*) that the Technical Adviser has no reason to believe that the current Project Schedule (being the Project Schedule delivered by the Company pursuant to paragraph 25 of Part A of this Schedule 2) is not accurate in all material respects;
- (b) Solely during the period prior to the Expansion Opening Date and with respect to any Advances to be utilised for the purpose of funding any Project Costs (excluding Project Costs related to the Diamond Expansion), receipt by the Intercreditor Agent by not later than 3:00 p.m. on the fifth Business Day prior to the proposed Advance Date of a certificate from the Technical Adviser in substantially the form of the Technical Adviser's Advance Certificate certifying in connection with the Advance Request and any amendment thereto made pursuant to Clause 3.1 (*Drawdown Conditions*) that, to the best of its knowledge:
  - (i) the Advances requested by the Company under the Term Loan Facilities are required prior to the date falling 30 days after the proposed Advance Date to make payments falling due or to refinance such payments previously made; and
  - (ii) certifications and statements made by the Company in the Advance Request (as referred to in Part F (*Form of Technical Adviser's Advance Certificate*) of this Schedule 2) and all attachments thereto are correct in all material respects.

**6. Recent Reports, Financial Statements and Other Information**

- (a) Receipt by the Intercreditor Agent of each of the reports, financial statements and other information due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) on or before the date of the Advance Request.
- (b) Solely during the period prior to the Expansion Opening Date, receipt by the Intercreditor Agent of the Technical Adviser's Monthly Report due on or before the date of the Advance Request.

**7. Hedging**

- (a) Receipt by the Intercreditor Agent of a copy (certified as being true and correct by a Responsible Officer) of each Hedging Agreement (and each confirmation thereunder) required to be entered into in accordance with the Hedging Arrangements.
- (b) The Company shall have delivered notice in respect of each Hedging Agreement to the counter-party thereto and the Security Agent shall have received an acknowledgement from each such counter-party, each such notice and acknowledgement being in the form required by clause 4 of the Debenture.

**8. Fees and Expenses**

The Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under the Senior Finance Documents or under any agreements between the Company and any of the Advisers (to the extent that such amounts have been duly invoiced).

**9. Major Project Documents**

The Company shall have delivered to the Intercreditor Agent and the Technical Adviser promptly after mutual execution and delivery thereof:

- (a) a list setting out the title, date, parties and subject matter of each Major Project Document; and
- (b) a copy of any Major Project Document (other than any Resort Management Agreement) listed pursuant to subparagraph (a) above and requested in writing by the Intercreditor Agent or the Technical Adviser.

**(II) Conditions Precedent to each Advance under the Revolving Credit Facility**

As set out in the Revolving Credit Facility Agreement.

**(III) Conditions Precedent to each Advance under the Additional Lender Facility**

As set out in the Additional Lender Facility Agreement.

Part C

Form of Company's Due Establishment CP Satisfaction Date Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "Common Terms Agreement"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of paragraph 5(a) (*Due establishment and authority*) and paragraph 13 (*Specimen signatures*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify, as at the date of this certificate, that:
  - (i) attached hereto as Annex 1 is a true and complete copy of the Governing Documents of the Company together with all amendments thereto;
  - (ii) attached hereto as Annex 2 is a true and complete copy of resolutions duly adopted by the Board of Directors of the Company at a meeting on [date], at which a quorum was present and acting throughout, which resolutions have duly approved the execution, delivery and performance of the Transaction Documents to which the Company is a party and the terms and conditions thereof, duly authorised [names] to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents (including Advance Requests), and such resolutions have not been revoked, modified, amended or rescinded and are in full force and effect. Except as attached hereto as Annex 2, no resolutions have been adopted by the Board of Directors of the Company in relation to the execution, delivery or performance of any of the Transaction Documents to which the Company is a party; and
  - (iii) attached hereto as Annex 3 are the specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

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Yours faithfully,

Name:  
Responsible Officer  
for and on behalf of  
Wynn Resorts (Macau) S.A.

**Attachments:**

- Annex 1 - Governing Documents of the Company
- Annex 2 - Board resolutions of the Company
- Annex 3 - Specimen signatures of Responsible Officers

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Part D

Form of Major Project Participant's CP Satisfaction Date Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "Common Terms Agreement"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. We hereby certify that:
  - (i) attached hereto as Annex 1 is a true and complete copy of the Governing Documents of [Major Project Participant] together with all amendments thereto as of the date of this certificate; and
  - (ii) attached hereto as Annex 2 is a true and complete copy of the resolutions duly adopted by our Board of Directors at a meeting on [date], at which a quorum was present and acting throughout, which resolutions have duly approved the execution, delivery and performance of the Transaction Documents to which we are a party and the terms and conditions thereof, duly authorised [names] to sign such Transaction Documents and have not been revoked, modified, amended or rescinded and are in full force and effect.

Yours faithfully,

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Name:  
for and on behalf of  
[Major Project Participant]

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Part E

Form of Insurance Adviser's CP Satisfaction Date Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "**Common Terms Agreement**"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purpose of paragraph 9(a) (*Insurance*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify that, as at the date of this certificate, all Construction Period Insurances required by the Senior Finance Documents to be in effect are in full force and effect and all premia (if any) due and payable as at such date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*) of the Common Terms Agreement.

Yours faithfully,

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Name:  
for and on behalf of  
[*Insurance Adviser*]

Part F

Form of Technical Adviser's Advance Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "Common Terms Agreement"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of paragraph 5 (*Adviser's Certificates*) and paragraph 9 (*Major Project Documents*) of sub-section 1 of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement and relates to the Advance Request [and the amendment thereto, each] dated on or about the date of this certificate.
3. We hereby certify, as at the date of this certificate, that:
  - (i) we have no reason to believe that the current Project Schedule is not accurate in all material respects;
  - (ii) to the best of our knowledge, the Advances requested by the Company are required prior to the date falling 30 days after the proposed Advance Date to make payments in respect of Project Costs falling due in such period or to refinance such payments previously made;
  - (iii) to the best of our knowledge, all certifications and statements made by the Company in paragraphs 4(ii), 4(iv), 4(viii), 4(ix), 5 and 6 of the Advance Request to which this certificate relates, and all attachments relevant thereto, are correct in all material respects; [and]
  - (iv) [Substantial Completion has been achieved in respect of the Original Project and the Expansion and we agree with the estimate of Final Completion Costs provided to the Intercreditor Agent.]

Yours faithfully,

Name:  
for and on behalf of  
[Technical Adviser]

<sup>1</sup> Delete if no amendment made.  
<sup>2</sup> In the case of Advances in respect of Final Completion Costs.

Part G

Form of Company's CP Satisfaction Date Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "Common Terms Agreement"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of paragraph 6 (*Permits*), paragraph 21 (*No Material Adverse Effect*), paragraph 23 (*Litigation*) and paragraph 27 (*Representations and Warranties*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify, as at the date of this certificate, that:
  - (i) copies of all documents referred to in Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement and delivered by us to the Intercreditor Agent on or prior to the date of this certificate are and remain, save (in the case of any such documents delivered prior to the date of this certificate) to the extent of any amendments made subsequent to such delivery in accordance with the Senior Finance Documents, true, complete and up-to-date copies of such documents in full force and effect as at the date of this certificate;
  - (ii) attached hereto as Annex 1 are true, complete and up-to-date copies of the amendments referred to in sub-paragraph (i) above, each of which is and remains in full force and effect;
  - (iii) attached hereto as Annex 2 are all Permits described in Part A of Schedule 12 (*Permits*) of the Common Terms Agreement which have been issued and are in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated under the Senior Finance Documents and all applicable appeal periods with respect thereto have expired;
  - (iv) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances exist which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required;

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- (v) all other Permits have been obtained or effected to the extent they are required as of the date hereof and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required as of the date of this certificate will not be obtained when they are required;
  - (vi) no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur;
  - (vii) no action, suit, proceeding or investigation of any kind has been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor or Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending nor been notified with respect to any action, suit or proceeding to the extent the same reasonably could be expected to have a Material Adverse Effect;
  - (viii) the representations and warranties of the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) of the Common Terms Agreement or in any of the other Transaction Documents are true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
  - (ix) to the Company's knowledge, the representations and warranties of the Performance Bond Provider and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents are true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date) unless the failure of any such representation and warranty to be true and correct could not reasonably be expected to have a Material Adverse Effect.

Yours faithfully,

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Name:  
Responsible Officer  
for and on behalf of  
Wynn Resorts (Macau) S.A.

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**Attachments:**

- Annex 1 - Amendments to Project Documents
- Annex 2 - Permits described in Part A of Schedule 12 (*Permits*)

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SCHEDULE 3

FORM OF ADVANCE REQUEST

To: [ ] as Intercreditor Agent  
[ ] as Hotel Facility Agent  
[ ] as Project Facility Agent

Date: [ ]

Dear Sirs,

Advance Request No. [ ]

1. We refer to the common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This is an Advance Request given pursuant to Clause 3 (*Drawdown of Advances*) of the Common Terms Agreement.
3. We hereby give you notice that, upon the terms and subject to the conditions contained in the Common Terms Agreement and the Facility Agreements, we wish to borrow the following Advances under the following Facilities on [proposed Advance Date] (the "Proposed Advance Date") to be applied towards the following purposes:  
[USD/HKD] [amount] under [the [Tranche A/Tranche B/Tranche C/Tranche D]<sup>3</sup> Facility of the [Hotel/Projects] Facility to be applied towards [specify purpose and break down Project Costs according to Line Item]
4. We confirm that:
  - (i) the above purposes and Advances comply with the permitted use of the Facilities under the Facility Agreements and Clause 5 (*Purpose*) of the Common Terms Agreement and that no part of the above Advances shall be applied otherwise than as mentioned in paragraph 3 above;
  - (ii) each Advance is required for the purpose specified, the Project Costs to be paid (or in respect of which the payment therefor is to be refinanced) from the proceeds of each Advance have been incurred and paid or are due and payable, or will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the Proposed Advance Date;

Delete as appropriate.

- (iii) proceeds of the above Advances requested under the [Hotel/Project]<sup>4</sup> Facility shall be applied in the amounts specified towards [Hotel Project/ Project Costs];
- (iv) the amount of the above Advances requested under the Hotel Facility, when aggregated with the amounts of all other Advances under the Hotel Facility, is no greater than the aggregate amount of all Hotel Project Costs incurred and paid or which will or the Company reasonably expects might be incurred and be due and payable by the Company on or before the date falling 30 days after the Proposed Advance Date;
- (v) each condition specified in Clause 2.2 (*Conditions Precedent to each Advance*) of the Common Terms Agreement is satisfied on the date of this Advance Request;
- (vi) we hereby certify that the Company has sufficient Funds to achieve construction completion of the Projects;
- (vii) since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur;
- (viii) [the following payments have been made in respect of Project Costs (excluding Project Costs related to the Diamond Expansion): *[break down according to Line Item and attach supporting documents]*];<sup>7</sup>
- (ix) since the last Advance Request, the following amounts have been paid in respect of payments for which an Advance has previously been requested but which were not yet payable at the time of its Advance Date:

Advance Request No.	Payment Description	Amount
5.	We attach, as required by paragraph 4 sub-section 1 of Part B of Schedule 2 ( <i>Conditions Precedent</i> ) of the Common Terms Agreement, documents substantiating the Project Costs (excluding Project Costs related to the Diamond Expansion) and payments referred to in paragraph 3 and sub-paragraph [4(viii) <sup>6</sup> / 4(ix) <sup>7</sup> ] above.	
6.	[For the period up to the Expansion Opening Date, we attach an updated Project Schedule.] <sup>8</sup>	

<sup>4</sup> Repeat as required for each Facility.  
<sup>5</sup> Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.  
<sup>6</sup> Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.  
<sup>7</sup> Not required for the Initial Advance under the Term Loan Facilities.  
<sup>8</sup> As required.

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7. We attach signed but undated receipts for the Advances requested above and hereby authorise the Intercreditor Agent to date such receipts on the date such Advances are made.
- The above Advances shall have a [first] Interest Period ending on [date].
9. The [proceeds/specified amounts] of the above Advances should be credited to, respectively, the following Accounts:  
[specify relevant Account and amount]
10. We further confirm, without any personal liability on the part of our Responsible Officer signing this Advance Request, that:
- (i) no Default is continuing; and
  - (ii) the representations and warranties contained in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to Clause 17.2 (*Timing*) of the Common Terms Agreement are true and correct in all material respects with reference to the facts and circumstances existing on the date of this Advance Request.

Yours faithfully,

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Name: \_\_\_\_\_  
<sup>10</sup>Responsible Officer  
for and on behalf of  
**Wynn Resorts (Macau) S.A.**

Attachments: [list]

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- <sup>9</sup> Each receipt must be numbered in series, the number corresponding to the number in the heading of the relevant Advance Request.  
<sup>10</sup> Each Advance Request must be signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent pursuant to Clause 3.2.1 (*Completion of an Advance Request*).

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## SCHEDULE 4

### REPRESENTATIONS AND WARRANTIES

#### 1. Organization

Each of the Obligors is duly organized, incorporated, validly existing and (if applicable) in good standing under the laws of the jurisdiction of its organization and has all requisite corporate or limited liability company power and authority to:

- (a) carry on its business as now conducted;
- (b) own or hold under lease and operate the Properties it purports to own or hold under lease;
- (c) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects;
- (d) incur the Financial Indebtedness contemplated hereunder; and
- (e) execute, deliver and perform under each of the Transaction Documents to which it is a party and create any Lien on its Property contemplated thereunder.

#### 2. Authorization; No Conflict

2.1 Each of the Obligors has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Transaction Documents to which it is a party. Neither the execution, delivery or performance of each Transaction Document to which it is a party nor the consummation of the transactions contemplated thereby:

- (a) by each Obligor does or will contravene the formation or constitutional documents or any other material Legal Requirement then applicable to or binding on each such Obligor; or
- (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation or imposition of any Lien upon any of the Properties of any Obligor or under any security or agreement or instrument to which any Obligor is a party or by which it or any of its respective properties may be bound, except for Permitted Liens or as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.2 No consent or authorization or filing with, notice to or other act by or in respect of, any Governmental Authority or any Person is required in connection with the borrowings under the Senior Finance Documents or with the execution, delivery, performance, validity or enforceability of any of the Transaction Documents, except consents, authorisations, recordings, stampings, filings, registrations and notices described in the definition of Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (in the case of Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or

made and are in full force and effect) or, in the case of any Transaction Documents entered into after the date of the Initial Advance under the Term Loan Facilities, as have been obtained or made and are in full force and effect at the time this representation is deemed to be made (except consents, authorisations, recordings, stampings, filings, registrations and notices described in the definition of Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (in the case of Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect).

**3. Legality, Validity and Enforceability**

- 3.1 Each of the Transaction Documents to which any of the Obligor is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 3.2 None of the Transaction Documents to which any of the Obligor is a party has been amended or modified except in accordance with this Agreement.
- 3.3 No Obligor has entered into any additional contracts in contravention of the terms of any Senior Finance Document.

**4. Compliance with Law and Permits**

Each Obligor is in compliance in all material respects with all material Legal Requirements (including all material Environmental Laws) and Permits and no notices of any material violation of any Permit made or issued by or with a Governmental Authority relating to any of the Projects have been issued, entered or received by any such Obligor (and which violation is continuing).

**5. Permits**

- 5.1 As of the Third Amendment Signing Date, there are no Permits of which the Company is aware or any material Permits, in each case, made or issued by or with a Governmental Authority that are required or will become required under existing Legal Requirements for the ownership, development, construction or financing of either Project, other than the Permits described in Schedule 12 (*Permits*).
- 5.2 All Permits have been obtained or effected to the extent they are required at the time this representation is deemed to be made and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such time shall not be obtained when they are required.

**6. Litigation**

There are no pending or, to any Obligor's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Obligor is a party or is subject, or by which any of them or any of their Properties (including, without limitation, revenue) or either of the Projects is bound that, individually or collectively, could reasonably be expected to have a Material Adverse Effect nor is any Obligor aware of any reasonable basis for any such action, suit, proceeding or investigation.

**7. Financial Statements**

The financial statements of the Obligors, delivered to the Intercreditor Agent pursuant to Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) on or prior to the CP Satisfaction Date, were, and, in the case of financial statements to be delivered after the CP Satisfaction Date pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) hereto, will be prepared in conformity with applicable GAAP and fairly present in all material respects the financial position of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows of the entities described therein for each of the periods then ended subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. No such financial statement fails to disclose any material Guarantee Obligations, contingent liabilities or liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, required to be reflected therein.

**8. Security Interests**

8.1 As of the Third Amendment Effective Date, save in respect of any Excluded Subsidiary or Excluded Project (in respect of which it is acknowledged that no Senior Secured Creditors have any Lien) and except for the obtaining of any consents or approvals, recording, filing, registration, giving of notice or other similar action as described in the definition of Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (in the case of Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect):

- (a) the security interests granted or purported to be granted to the Senior Secured Creditors pursuant to the Security Documents in the Project Security (i) (notwithstanding, without limitation, the Substitution) constitute as to Properties included in the Project Security existing on the date on which this representation is made or deemed to be made or repeated and, with respect to subsequently acquired Properties included in the Project Security, will constitute a perfected security interest under all applicable law and/or the UCC and (ii) have, and, with respect to such subsequently acquired Properties, will have been perfected under all applicable law and/or the UCC, and grant the Senior Secured Creditors superior priority and rights in respect of the full amount of the Obligations over the rights of any third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, subject to the rights and priorities of Permitted Liens;
- (b) all such action as is necessary has been taken to establish, perfect and maintain the Senior Secured Creditors' rights in and to the Project Security, including any obtaining of consents or approvals, recording, filing, registration, giving of notice or other similar action; and

(c) each of the Security Documents is effective to create a legal, valid, binding and enforceable security interest in the Project Security described therein and proceeds and products thereof.

Each of the Obligors has properly delivered or caused to be delivered to the Security Agent all Project Security that requires perfection of the Lien and security interest described above by possession.

8.2 As of the Third Amendment Effective Date, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (a) the pledge or grant by the Obligors of the Liens purported to be created in favour of the Secured Creditors pursuant to any of the Security Documents, or (b) the exercise by the Security Agent, or any of the other Secured Creditors of any rights or remedies in respect of any Project Security (whether specifically granted or created pursuant to any of the Security Documents or created or provided for by applicable law), except for registrations, filings, giving of notices or recordings contemplated by paragraph 8.1 of this Schedule 4 or as described in definition of Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*).

8.3 As of the Third Amendment Effective Date, except such as may have been filed in favour of the Security Agent as contemplated by paragraph 8.1 of this Schedule 4 or as set forth in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*), no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Project Security is on file in any filing or recording office in the United States of America or elsewhere.

#### 9. No Existing Defaults

9.1 No Event of Default has occurred which is continuing.

9.2 None of the Obligors, or, to the Company's knowledge, the Performance Bond Provider or any other Major Project Participant is in default under or with respect to any of its material Contractual Obligations under any of the Transaction Documents to which it is a party, which default (in the case only of a Major Project Participant other than an Obligor) could reasonably be expected to have a Material Adverse Effect.

#### 10. Taxes

10.1 Each of the Obligors has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction and all such tax and informational returns are correct and complete in all material respects. Each of the Obligors has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (a) those taxes that it is contesting in good faith and by appropriate proceedings and (b) those taxes not yet due, *provided* that with respect to each of sub-paragraph (a) and (b) of this paragraph 10.1, it has established reserves therefor in amounts that are adequate for the payment thereof and are required by applicable GAAP).

10.2 None of the Obligors has incurred any material tax liability in connection with any of the Projects or the other transactions contemplated by the Transaction Documents which has not been disclosed in writing to the Intercreditor Agent, including as disclosed in the financial statements delivered to the Intercreditor Agent under this Agreement.

10.3 There are no Liens for Taxes on any of the Properties of any of the Obligors other than Liens permitted pursuant to paragraph 3(a) of Part B of Schedule 5 (*Covenants*) hereto.

**11. Business, Debt, Etc.**

The Obligors have not conducted any business other than a Permitted Business and the Substitution. The Obligors have no place of business outside the Macau SAR except (in the case of the Company) as otherwise permitted under Part B of Schedule 5 (*Covenants*) or, in the case of any other Obligor, outside its jurisdiction of incorporation. No Obligor has any outstanding Financial Indebtedness other than (in the case of the Company) Permitted Financial Indebtedness or (in the case of any other Obligor) as permitted by the Senior Finance Documents to which it is a party.

**12. Environmental Laws**

12.1 Each Obligor is in compliance with all applicable material Environmental Laws in all material respects and, so far as it is aware, there are no circumstances that could at any time be reasonably expected to prevent or interfere with such compliance.

12.2 No material Environmental Claim has been made which has not been fully discharged, released, satisfied or withdrawn.

12.3 So far as each Obligor is aware:

(a) the Site does not contain any Hazardous Substances whose presence on the Site could reasonably be expected to affect the Company (or any other Obligor) or the Projects in a material and adverse manner; and

(b) there are no antiquities or obstructions on the Site which could reasonably be considered likely to prevent or impede the carrying out of either Project in any material respect.

**13. Utilities**

All material utility services (including, without limitation, gas, water and electrical interconnection) necessary for the Projects are or will be available at the Site as and when required.

14. [Not used]

**15. Sufficiency of Funds**

As of the first day of each Fiscal Quarter of the Company and as of each Advance Date, the Company together with each other Obligor has sufficient Funds to achieve construction completion of the Projects and satisfy any other existing or future liabilities, claims or other obligations of any kind.

**16. Sufficiency of Interests and Project Documents**

- 16.1 The Company is the sole legal and beneficial owner of, and has good title to, or has a valid leasehold interest in, the land comprised in the Site, and each Obligor has good title to, or a valid license or leasehold interest in, all its Property, and, other than as provided by the Transaction Documents, none of its Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or Property of the Company), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.
- 16.2 The Intercreditor Agent has received a true, complete and correct copy of each of the Major Project Documents (excluding any Resort Management Agreements) in effect or required to be in effect as of the date this representation is made or deemed to be made (including all exhibits, schedules, disclosure letters, modifications and amendments referred to therein or delivered or made pursuant thereto, if any). Each Major Project Document (excluding any Resort Management Agreements) is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 16.3 All conditions precedent to the obligations of the respective parties (other than the Company or any other Obligor) under the Major Project Documents (excluding any Resort Management Agreements) have been satisfied or waived, except for such conditions precedent which by their terms cannot be met until a later stage in the construction or operation of the Projects, and the Obligors have no reason to believe that any such condition precedent which could reasonably be expected to have a Material Adverse Effect cannot be satisfied on or prior to the appropriate stage in the development, construction or operation of the Projects.

**17. Intellectual Property**

Each Obligor owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. To each Obligor's knowledge, no claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Obligor know of any valid basis for any such claim, except with respect to Intellectual Property (other than any Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name), as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect. The use by the Company of the Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name does not infringe on the rights of any Person. The use by the Company of Intellectual Property other than Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name, does not infringe on the rights of any Person, which infringement, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

18. **Projections**

As of the Third Amendment Signing Date, the Projections:

- (a) are based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (b) are consistent with the provisions of the Transaction Documents in all material respects (including paragraph 1 of Part B and paragraph 2(c) of Part A of Schedule 5 (*Covenants*));
- (c) set forth all material costs and expenses anticipated to be incurred; and
- (d) represent the Company's views as to costs and expenses anticipated to be incurred in the manner contemplated by the Transaction Documents.

19. **Fees and Enforcement**

Other than amounts that have been paid in full or will have been paid in full by the Third Amendment Effective Date, no fees or taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of any of the Transaction Documents then in effect.

20. **ERISA**

Either (a) there are no Plans or Multiemployer Plans for the Company or any member of the Controlled Group or (b) (i) the Company and each Commonly Controlled Entity have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each Plan and for contributions to any Multiemployer Plan; (ii) each Plan is in compliance in all

material respects with the currently applicable provisions of ERISA and the Code; (iii) neither the Company nor any Commonly Controlled Entity has incurred any liability to the PBGC or a Plan under Title IV of ERISA (other than liability or contributions for premiums due in the ordinary course). Assuming that the credit extended hereunder does not involve the assets of any employee benefit plan subject to Title I of ERISA sponsored, monitored or contributed by for the Company or any Commonly Controlled Entity, neither the execution of the Transaction Documents nor the consummation of the transactions contemplated thereby will involve a "prohibited transaction" with respect to any Plans within the meaning of section 406 of ERISA or section 4975 of the Code which is not exempt under section 408 of ERISA or under section 4975(d) of the Code.

21. **Subsidiaries and Beneficial Interest**

21.1 *The Company*

- (a) As of the Third Amendment Effective Date, Mr Wong Chi Seng legally and beneficially owns 20,010 Class A Shares (as defined in the Governing Documents of the Company), representing 10% of the total issued share capital and 10% of the Voting Stock of the Company;

- (b) As of the Third Amendment Effective Date, Wynn HK, a company incorporated in the Hong Kong SAR, legally and beneficially owns 102,000 Class B Shares (as defined in the Governing Documents of the Company), representing 51% of the total issued share capital and 51% of the Voting Stock of the Company; and
- (c) As of the Third Amendment Effective Date, Wynn International, a company incorporated in the Isle of Man, legally and beneficially owns 78,000 Class C Shares (as defined in the Governing Documents of the Company), representing 39% of the total issued share capital and 39% of the Voting Stock of the Company.

21.2 *Wynn HK*

As of the Third Amendment Effective Date, Wynn Holdings, a company incorporated in the Isle of Man, legally and beneficially owns 99% and beneficially owns 1%, and Wynn International, as nominee of Wynn Holdings, legally owns 1% of the total issued share capital of Wynn HK.

21.3 *Wynn Holdings*

As of the Third Amendment Effective Date, Wynn International legally and beneficially owns 100% of Wynn Holdings.

21.4 *Wynn International*

As of the Third Amendment Effective Date, Wynn Asia 2, a company incorporated in the Cayman Islands, legally and beneficially owns 100% of the total issued share capital of Wynn International.

21.5 *Wynn Asia 2*

As of the Third Amendment Effective Date, Wynn Asia, a company incorporated in the State of Nevada, legally and beneficially owns 100% of the total issued share capital of Wynn Asia 2.

- 21.6 Save as provided by the Security Documents or the Wong Option Agreement or as otherwise permitted by the Senior Finance Documents, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock issued by any Obligor (other than any Capital Stock in Wynn Asia 2). No Obligor has issued, or authorized the issuance of, any Disqualified Stock.

22. **Labour Disputes and Acts of God**

- 22.1 Neither the business nor the Properties of any Obligor, nor, to the knowledge of each Obligor, any other Major Project Participant, is affected by any fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty or other event of force majeure, that could reasonably be expected to have a Material Adverse Effect.

22.2 There are no strikes, lockouts, stoppages, slowdowns or other labour disputes against any Obligor pending or, to the knowledge of each Obligor, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Obligor have not been in violation of any applicable legal Requirement dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from each Obligor on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of such Obligor.

23. **Liens**

Except for Permitted Liens, none of the Obligors have secured or agreed to secure any Financial Indebtedness by any Lien upon any of their present or future revenues or other Properties or Capital Stock. None of the Obligors have outstanding any Lien or obligation to create Liens on or with respect to any of their Properties (including, without limitation, revenues), other than Permitted Liens and as provided in the Security Documents.

24. **Title**

Save, in the case of any such Property which, pursuant to the Security Documents, is expressed to be subject only to the floating charge granted pursuant to the Floating Charge, to the extent such floating charge has not been consolidated and the absence of such title could not reasonably be expected to have a Material Adverse Effect, each of the Obligors owns and has good, legal and beneficial title to the Property upon which it purports to grant Liens pursuant to the Security Documents, free and clear of all Liens, except Permitted Liens.

25. **Project Schedule**

Solely during the period prior to the Expansion Opening Date, the Project Schedule:

- (a) accurately specifies in summary form the work that the Company proposes to complete in each calendar quarter from the CP Satisfaction Date through Final Completion of the Projects, all of which the Company expects to be achieved;
- (b) is, to the Company's knowledge, based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (c) is consistent with the provisions of the Transaction Documents in all material respects;
- (d) has been and will (in the case of any update) be prepared in good faith and with due care; and
- (e) fairly represents the Company's expectation as to the matters covered thereby as of its date or the date of its most recent update.

26. **Location of Accounts and Records**

The Company's (and each of its Subsidiaries') books of accounts and records are located at the Company's principal place of business in the Macau SAR.

27. **Solvency**

Each Obligor is, and after giving effect to:

- (a) the incurrence of all Financial Indebtedness;
- (b) the use of the proceeds of such Financial Indebtedness (including, in the case of the Company, the use of proceeds of Advances made under the Senior Finance Documents); and
- (c) obligations being incurred in connection with the Transaction Documents,

will be and will continue to be Solvent.

28. **Plans and Specifications**

The Plans and Specifications:

- (a) are, to the Company's knowledge as of the Third Amendment Effective Date, based on assumptions that the Company believes to be reasonable as to all legal and factual matters material thereto;
- (b) are, and except to the extent permitted under paragraph 15 of Part B of Schedule 5 (*Covenant*) will be from time to time, consistent with the provisions of the Transaction Documents;
- (c) have been prepared in good faith with due care; and
- (d) are accurate in all material respects and fairly represent the Company's expectations as to the matters covered thereby.

29. **No subsidiaries**

Save as permitted hereunder, the Company has no subsidiaries and does not legally or beneficially own any Capital Stock in any Person.

30. **Pari Passu**

The payment obligations under the Senior Finance Documents of each of the Obligors rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

31. **Insurance**

The Company and each other Obligor is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with

Schedule 7 (*Insurance*); and no Obligor has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

32. **Fiscal Year**

The fiscal year of each of the Obligors ends on 31 December of each calendar year.

33. **Accuracy of Information, etc.**

As of the Third Amendment Signing Date, or, in the case of the Information Memorandums, the respective dates thereof, no statement or information contained in each Information Memorandum or any other document, certificate or written statement furnished to any Secured Creditor, by or on behalf of any Obligor or the PASA Agent for use in connection with the transactions contemplated by any of the Senior Finance Documents, contained (when, in the case of, any such document, certificate, or written statement (other than the Information Memorandums), read as a whole with all such documents, certificates and written statements furnished on or prior to the Third Amendment Signing Date to such Senior Secured Creditor) any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. As of the Third Amendment Signing Date, or, in the case of the Information Memorandums, the dates thereof, the projections and pro forma financial information contained in the materials referenced above (including the Projections) are based upon good faith estimates and assumptions believed by management of the Obligors to be reasonable at the time made, it being recognized by the Senior Secured Creditors that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the Third Amendment Signing Date, there are no facts known to any Obligor or the PASA Agent that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed in the Senior Finance Documents, in the Information Memorandums or in any other documents, certificates and written statements furnished to the Senior Secured Creditors for use in connection with the transactions contemplated by the Senior Finance Documents.

34. **Site and Site Easements**

34.1 The Site, the material Site Easements and the current use thereof, comply in all material respects with all applicable Legal Requirements and with all Insurance Requirements.

34.2 No Taking has been commenced or, to the Company's knowledge, is contemplated with respect to all or any portion of the Site or the Site Easements or for the relocation of roadways providing access thereto except, in each case, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

34.3 There are no current, pending or, to the knowledge of the Company, proposed special or other assessments for public improvements or otherwise affecting the Site or the Site Easements, nor are there any contemplated improvements thereto that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to the Company.

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- 34.4 There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Site or the material Site Easements (other than those set forth in the Senior Finance Documents and the Land Concession Contract or arising by mandatory operation of law).
- 34.5 Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no Project building or structure or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

35. **Affiliate Agreements**

Each Affiliate Agreement in effect as of the date this representation is made or deemed to be made has been entered into on arm's length terms and for full market value, in accordance with the Concession Contract and all other applicable Legal Requirements and otherwise in compliance with the terms hereof.

36. **Wynn Asia 2**

As of the Third Amendment Effective Date, Wynn Asia 2 has not carried on any business other than holding shares in Wynn International, entering into the Senior Finance Documents as a Wynn Obligor, entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the appointment of lawyers and auditors); (ii) the Substitution and (iii) complying with its obligations under the Finance Documents (as defined in the Deed of Appointment and Priority) (including without limitation the appointment of process agents).

## SCHEDULE 5

### COVENANTS

#### Part A - Affirmative Covenants

The Company shall:

- I. **Financial Statements** - Furnish to the Intercreditor Agent and, in the case of the Wynn Resorts' annual report referred to in sub-paragraph (a) below, each Facility Agent:
  - (a) as soon as available, but in any event not later than the earlier of (i) 15 days after the filing with the SEC of Wynn Resorts' annual report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of:
    - (i) the audited balance sheets (on a consolidated basis) of:
      - (A) Wynn Resorts; and
      - (B) the Company.as at the end of such Fiscal Year and the related audited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by the Auditors and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary; and
    - (ii) the unaudited balance sheet, of:
      - (A) Wynn Asia 2;
      - (B) Wynn International; and
      - (C) Wynn HK.as at the end of such Fiscal Year and the related unaudited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparable form the figures for the previous Fiscal Year; and
  - (b) as soon as available, but in any event not later than the earlier of (i) 15 days after the filing with the SEC of Wynn Resorts' quarterly report on Form 10-Q (or successor form thereto) with respect to each of the first three Fiscal Quarters of each Fiscal Year and (ii) 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the unaudited (on a consolidated basis) balance sheets of:
    - (A) Wynn Resorts;

- (B) Wynn Asia 2;
- (C) Wynn International;
- (D) Wynn HK; and
- (E) the Company,

as at the end of such quarter and the related unaudited statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary.

All such financial statements shall be fair in all material respects (in the case of financial statements delivered pursuant to sub-paragraph (b) of this paragraph 1, subject to normal year-end audit adjustments) and were prepared in accordance with applicable GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such Auditors or Responsible Officer, as the case may be, and disclosed therein).

2. **Certificates; Other Information** - Furnish to the Intercreditor Agent:

(a) concurrently with the delivery of any financial statements pursuant to paragraph 1 of this Part A:

- (i) a certificate of a Responsible Officer of the relevant Obligor certifying that the statement is fair in all material respects (subject, where relevant, to normal year-end audit adjustments);
- (ii) a certificate of a Responsible Officer of the relevant Obligor stating that, to the best of each such Responsible Officer's knowledge, the Obligor during such period has observed or performed all of its material covenants and other agreements, and satisfied every material condition contained in the Senior Finance Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no actual knowledge of any Default except as specified in such certificate or in the equivalent certificate for such period issued pursuant to this sub-paragraph (a)(ii) by a Responsible Officer of another Obligor;
- (iii) when applicable, in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Obligors with the provisions of this Agreement as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be; and

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- (iv) in the case of the Company:
- (1) a list of each of its accounts;
  - (2) upon the reasonable request of the Intercreditor Agent, a copy of the bank statements for each such account for the preceding Fiscal Quarter; and
  - (3) a certificate of a Responsible Officer of the Company setting out the amount(s) and details of any Permitted Financial Indebtedness, Subordinated Debt or Shareholder Loans (including, in each case, all terms and conditions thereof) made available to the Company during the preceding Fiscal Quarter;
- (b) for each calendar month during the period up to and including the first calendar month by which (1) Substantial Completion has been achieved and the Opening Conditions, specified in paragraph (a) of the definition thereof have been satisfied in respect of the Original Project and (2) the Expansion Opening Date has occurred, deliver to the Facility Agents, the Technical Adviser and the Intercreditor Agent, within 45 days following the end of the relevant calendar month, a status report for the Original Project and the Expansion (the "Monthly Construction Period Report") in form and substance substantially similar to the status reports delivered by the Company to the Intercreditor Agent prior to the Second Amendment Signing Date and thereafter, deliver to the Facility Agents and the Intercreditor Agent (acting on the instructions of the Lenders) such status reports as (and at such intervals which) the Lenders deem necessary;
- (c) 30 days prior to the beginning of each Fiscal Year thereafter, detailed projections (each, together with the projections provided pursuant to paragraph 22 of Part A of Schedule 2 (~~Conditions Precedent~~), the "Projections") of the Company and the Restricted Group for such Fiscal Year (or portion thereof from the Original Project Opening Date through the end of such Fiscal Year), including a projected balance sheet of the Company as of the end of such Fiscal Year and the related statements of projected cash flow and profit and loss and the detailed assumptions supporting such Projections and prepared on a consolidated basis for the Restricted Group and without taking account of any contribution from any amounts derived from or under: (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary and, no less frequently than quarterly, significant revisions, if any, of such Projections with respect to such Fiscal Year, which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect and which such Projections shall demonstrate compliance with paragraph 1 of Part B of this Schedule;

- (d) within 45 days after the end of each Fiscal Quarter after the Original Project Opening Date, a narrative discussion and analysis (the "Quarterly Operating Period Report") in form and substance substantially similar to the narrative discussions and analyses delivered by the Company to the Intercreditor Agent prior to the Second Amendment Signing Date of the financial condition and results of operations of the Company and the Restricted Group for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year (or if the then current Fiscal Year is the Fiscal Year in which the Original Project Opening Date has occurred, from the Original Project Opening Date) to the end of such Fiscal Quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;
- (e) promptly, and in any event within ten Business Days after any Major Project Document or Affiliate Agreement is terminated (save upon expiration in accordance with its terms) or amended or any new Major Project Document or Affiliate Agreement is entered into (other than, in each case, any Resort Management Agreement), or upon becoming aware of any material default by any Person or the occurrence of any event under a Major Project Document or Affiliate Agreement (other than, in each case, any Resort Management Agreement) which, with the expiry of any grace period, the giving of notice or the making of any determination provided thereunder, or any combination of the foregoing, would give rise to a right to terminate (a "Termination Event"); a written statement describing such event with copies of such amendments or new Major Project Document or Affiliate Agreement (including, in the case of the latter, a certificate from a Responsible Officer confirming the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*)) and, with respect to any such terminations or material defaults, an explanation of any actions being taken by the Company with respect thereto;
- (f) promptly, and in any event within 30 days of the end of each Fiscal Year, deliver to the Intercreditor Agent a certificate certifying that the insurance requirements of Schedule 7 (*Insurance*) have been implemented and are being complied with;
- (g) within twenty days after the Company receives actual notice of a Proceeding or Proceedings instigated or threatened in writing involving an alleged liability of, or claims against or affecting, the Company, Wynn HK, Wynn International, Wynn Asia 2 or any other Obligor equal to or greater than USD5,000,000 or its equivalent, deliver a schedule describing such Proceeding or Proceedings, and promptly after request by the Intercreditor Agent, such other information as may be reasonably requested by the Intercreditor Agent to enable the Intercreditor Agent and its counsel to evaluate any of such Proceedings;
- (h) a copy of each written notice which is given under, or pursuant to, the Concession Contract or the Land Concession Contract by the Macau SAR to the Company promptly upon receipt of such notice;

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- (i) at the same time as the giving of any written notice under or pursuant to the Concession Contract or the Land Concession Contract by the Company to the Macau SAR, a copy of such notice; and
  - (j) promptly, such additional financial and other information as the Intercreditor Agent may from time to time reasonably request.
3. **Permits** - Deliver to the Intercreditor Agent and (in the case of Permits made or issued by or with a Governmental Authority) the Technical Adviser promptly, but in no event later than 20 days after the receipt thereof by the Company, copies of:
- (a) all material Permits (including those specified in Part B of Schedule 12 (*Permits*)) that are obtained or entered into by the Company or any other Obligor after the Signing Date; and
  - (b) any material amendment, supplement or other modification to any such Permit received by the Company or any other Obligor after the Signing Date.
4. **Plans and Specifications** - Provide to the Technical Adviser copies of, and maintain at the Site, a complete set of the *Plans and Specifications*.
5. **Technical Adviser**
- 5.1 Solely with respect to the Original Project and the Expansion, cooperate and cause the Prime Contractor and the PASA Agent to cooperate with the Technical Adviser in the performance of the Technical Adviser's duties. Without limiting the generality of the foregoing, the Company shall and shall cause the Prime Contractor to:
- (a) communicate with and promptly provide all invoices, documents, plans and other information reasonably requested by the Technical Adviser relating to the work;
  - (b) provide the Technical Adviser with access to the Site and, subject to required safety precautions and reasonable site management restrictions, the construction areas; and
  - (c) solely in the case of the PASA Agent, provide the Technical Adviser with reasonable working space and access to telephone, copying and telecopying equipment at the Site (or such other location in reasonable proximity to the Site as the Projects near completion).
- and the Company shall take reasonable measures to otherwise facilitate the Technical Adviser's review of the construction of the Projects and preparation of the certificates and reports required hereunder. The Company shall also maintain in Hong Kong or Macau a complete set and, promptly upon written request, provide the Technical Adviser with reasonable access to and copies of, each first-tier Subcontract entered into by the Prime Contractor (or any other Contractor who is party to a Project Document entered into with the Company that is not subject to a fixed price) with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of USD500,000 or its equivalent.

- 5.2 Solely, with respect to the Original Project and the Expansion, in addition to any other consultation required under this Agreement, following the end of each quarter, upon the request of the Intercreditor Agent, consult with any such Person regarding any adverse event or condition identified in any report prepared by the Technical Adviser.
6. **Management Letters** - Deliver to the Intercreditor Agent a copy of any "management letter" or other similar communication received by the Company or any other Obligor from the Auditors in relation to the Company's or any other Obligor's financial, accounting and other systems, management or accounts.
7. **Governmental and Environmental Reports** - Deliver to the Intercreditor Agent and the Technical Adviser copies of all material reports required to be filed by the Company or any other Obligor with any Governmental Authority in connection with the construction of the Projects.
8. **Payment of Obligations** - To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy (and ensure each other Obligor shall pay, discharge or otherwise satisfy) at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate (under the circumstances) proceedings and reserves in conformity with applicable GAAP with respect thereto have been provided on the books of the Company (and, where relevant, such other Obligor).
9. **Conduct of Business and Maintenance of Existence, etc.**
- (a) Preserve, renew and keep in full force and effect (and ensure each other Obligor shall preserve, renew and keep in full force and effect) its corporate or limited liability company existence and remain a Subsidiary of Wynn Resorts;
  - (b) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary (and ensure each other Obligor shall take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary) in the normal conduct of its business, except to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; and
  - (c) engage only in the businesses which are Permitted Businesses.
10. **Maintenance of Property; Leases; Insurance**
- 10.1 Keep (and ensure each other Obligor shall keep) all material Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.
- 10.2 Maintain (and ensure each other Obligor shall maintain) all material rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of the Site and the Site Easements, except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company (or, as the case may be, any other Obligor).

- 10.3 Comply (and ensure each other Obligor shall comply) with the terms of each lease or other grant of rights in respect of land, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where non-compliance therewith could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company (or, as the case may be, any other Obligor).
- 10.4 At all times maintain in full force and effect:
- (a) the insurance policies listed in Schedule 7 (*Insurance*); and
  - (b) such other insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, and
- otherwise comply with Schedule 7 (*Insurance*).
- 10.5 Ensure that each other Obligor maintains insurances on and in relation to its business and assets and against those risks and to an extent (i) as is usual for companies carrying on the same or substantially similar business (ii) which is, where relevant, at least comparable to that required to be maintained by the Company and (iii) in respect of such insurances, is maintained on substantially the same terms and conditions (including in respect of any reinsurance or any assignment or grant of other Liens in favour of the Security Agent over or in respect thereof) as those set out in Schedule 7 (*Insurance*).
- 10.6 Preserve and protect (and ensure each other Obligor preserves and protects) the Liens created pursuant to the Security Documents and, if any Lien (other than Permitted Liens) is asserted against any of the Project Security, promptly give (and ensure each other Obligor promptly gives) the Intercreditor Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Intercreditor Agent.
11. **Inspection of Property; Books and Records; Discussions:**
- (a) Keep (and ensure each other Obligor shall keep) proper books of records and account in which full, true and correct entries in conformity with applicable GAAP and all Legal Requirements.
  - (b) Subject to any Macau Gaming Laws restricting such actions and, where no Event of Default has occurred which is continuing, prior reasonable request and notice, procure (and ensure each other Obligor procures) that each of the Agents or their respective nominees and the Technical Adviser (each a "Relevant Person") be allowed reasonable rights of inspection and access during normal business hours to the Site Facilities, the Projects, the Auditors and other Company and Obligor officers, the Company's and each other Obligor's accounting books and records and any other documents relating to the Projects as they may reasonably require, and so as not unreasonably to interfere with the

operations of the Company or any Major Project Participant and to take copies of any documents inspected. Any information and documents made available for inspection by a Relevant Person pursuant to this paragraph shall be made available subject to customary confidentiality undertakings being executed by such Relevant Person.

- (c) For all expenditures with respect to which Advances under the Term Loan Facilities are made, the Company shall retain, until at least three years after delivery of the last report specified in paragraph 2(b) of this Part A for the Fiscal Year in which the last Advance was made under the Term Loan Facilities; all records and other documents evidencing such expenditures as are required hereunder to be attached to an Advance Request made in respect of any Term Loan Facility.

12. Notices - Promptly give notice to the Intercreditor Agent of:

- (a) the occurrence of any Default;
- (b) unless already notified pursuant to paragraph 2(e) of this Part A, any notice of termination (other than expiration in accordance with the terms thereof), default or any Termination Event under any Major Project Document;
- (c) (i) any fact, circumstance, condition or occurrence at, on, or arising from, any of the Site or the Site Easements that results in non-compliance with any Environmental Law that has resulted or could reasonably be expected to result in a Material Adverse Effect, and (ii) any Environmental Claim pending or, to the Company's or any other Obligor's knowledge, threatened against the Company or any other Obligor or, to the Company's or any other Obligor's knowledge, pending or threatened against any Contractor or any Subcontractor arising in connection with its occupying or conducting operations on or in respect of the Projects, the Site or the Site Easements which could reasonably be expected to have a Material Adverse Effect;
- (d) any change in the Responsible Officers of the Company or any other Obligor, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Facility Agent or the Intercreditor Agent, evidence of the authority of such new Responsible Officer;
- (e) any proposed material change in (i) the nature or scope of either Project or (ii) the business or operations of the Company or any other Obligor;
- (f) any notice of any material schedule delay delivered under the Construction Contract and all remedial plans by the Prime Contractor and updates thereof;
- (g) any "Substantial Completion" certificates or notices thereof delivered under any Major Project Documents (including any Certificate of Substantial Completion or any notices of Substantial Completion);
- (h) any (i) default or event of default (or alleged default) under any Contractual Obligation of the Company or any other Obligor or (ii) litigation, investigation or proceeding which may exist at any time between the Company or any other Obligor and any Governmental Authority, that in either case, could reasonably be expected to have a Material Adverse Effect;

- (i) upon any officer of the Company or any other Obligor obtaining knowledge thereof, the instigation or written threat of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company or any other Obligor, or any Property of the Company or any other Obligor (collectively, "Proceedings") not previously disclosed in writing by the Company to the Lenders that, in any case (i) is reasonably likely to give rise to a Material Adverse Effect or (ii) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions under the Transaction Documents, or any material development in any such Proceeding, in each case together with such other information as the Intercreditor Agent may reasonably require;
- (j) the following events, as soon as possible and in any event within 30 days after the Company or any other Obligor knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favour of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, the Company, any other Obligor or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan;
- (k) solely during the period prior to the Expansion Opening Date, any event, occurrence or circumstance which reasonably could be expected to render the Company incapable of or prevent the Company from meeting any material obligation of the Company under the Construction Contract or the other Major Project Documents as and when required thereunder; and
- (l) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this paragraph shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company and/or the relevant Obligor proposes to take with respect thereto.

13. **Environmental Laws; Permits**

- 13.1 Inform the Intercreditor Agent promptly on becoming aware of any, or any anticipated, release, emission, discharge or disposal of any matter that might reasonably be expected to form the basis for any Environmental Claim.

- 13.2 Comply (and ensure each other Obligor complies) with all applicable Environmental Laws and Environmental Licences (save for any failure to comply that could not reasonably be expected to have a Material Adverse Effect);
- 13.3 Provide copies of any notices from any Governmental Agency of non-compliance with any material Environmental Law or Environmental Licence and any notices of any *Environmental Claims* to the Intercreditor Agent.
- 13.4 Deliver to the Intercreditor Agent:
- (a) any notice that any Governmental Authority may condition approval of, or any application for, any Permit held by the Company or any other Obligor on terms and conditions that are materially burdensome to the Company or any other Obligor, or to the operation of any of its businesses or any Property owned, leased or otherwise operated by the Company or any other Obligor in each case in a manner not previously contemplated; and
  - (b) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Intercreditor Agent in relation to any matters disclosed pursuant to this paragraph 13.

14. **Hedging**

Comply with the Hedging Arrangements and not enter (and ensure no other Obligor enters into) into any other Swap Agreement or derivative transaction unless:

- (a) the Company is in compliance with the Hedging Arrangements; and
- (b) unless such arrangement is with a Lender which has executed a duly completed Hedging Counterparty's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and is on the same terms as those comprised in the Hedging Arrangements, the counterparty thereto has no Lien or any right to share in any Lien over any Property of the Company.

15. **Additional Collateral, Discharge of Liens, etc.**

15.1 With respect to any Property acquired by the Company or any other Obligor after the Signing Date as to which the Senior Secured Creditors do not have a perfected security interest, subject to compliance with applicable Macau Gaming Laws and restrictions on the grant of Liens permitted pursuant to paragraph 3 of Part B of this Schedule, promptly:

- (a) execute and deliver (and ensure each other Obligor executes and delivers) to the Intercreditor Agent such amendments to the Security Documents or execute and deliver such other documents as the Intercreditor Agent, acting reasonably, deems necessary or advisable to grant to the Senior Secured Creditors a security interest in such Property; and

- (b) take all actions necessary or advisable to grant to the Senior Secured Creditors a perfected first priority security interest in such Property (subject to Permitted Liens).

In addition to the foregoing, in the event any such Property acquired after the Signing Date consists of land or other Property with respect to which a recording or registration in the real property or other records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within 30 days following the date of such acquisition):

- (i) execute and deliver (and ensure each other Obligor executes and delivers) a mortgage, substantially in the form of the Mortgage (with such modifications, if any, as are necessary to comply with Legal Requirements that the Security Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Security Agent for recording a supplement to the Mortgage, in either case pursuant to which the Company or other Obligor grants to the Senior Secured Creditors a Lien on such Property subject only to Permitted Liens; and
- (ii) execute and/or deliver (and ensure each other Obligor executes and/or delivers) such other documents or provide such other information in furtherance thereof as the Security Agent may reasonably request, including delivering documents and taking such other actions which would have been required pursuant to Clause 2 (Conditions Precedent) if such Property were part of the Project Security at the CP Satisfaction Date.

15.2 Notwithstanding anything to the contrary in this paragraph 15, sub-paragraph 15.1 shall not apply to:

- (i) any Property created or acquired after the Signing Date, as applicable, as to which the Intercreditor Agent has reasonably determined that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining or maintaining a perfected security interest therein;
- (ii) any Subconcession proceeds or any Property purchased with Subconcession proceeds (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (iii) any works of art, antiquities, precious stones, precious metals or other similar assets (which are not of a type that will become affixed to the Site or the other Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of either Project);
- (iv) any Property comprised in or derived from Resort Management Agreements (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company); or

(v) stock or other ownership interests in Excluded Subsidiaries and Excluded Projects.

16. **Use of Proceeds and Revenues**

- 16.1 Use the proceeds of each of the Facilities only for the purposes specified or allowed in this Agreement and the Facility Agreement relating to such Facility.
- 16.2 Ensure that all of its funds and those of any other Obligor and all other amounts received by it or any other Obligor (other than any Subconcession proceeds or amounts received by the Company in respect of any Excluded Subsidiaries or Excluded Projects or its entry into, or performance of its obligations under, any Resort Management Agreement) are deposited into any Account or combination of Accounts and otherwise in accordance with the provisions of this Agreement and that it and each other Obligor otherwise complies with Schedule 6 (*Accounts*).
17. **Compliance with Laws, Project Documents, etc.; Permits**
- 17.1 Comply (and ensure each other Obligor complies) in all material respects with all material Legal Requirements and its Governing Documents.
- 17.2 Comply (and ensure each other Obligor complies), duly and promptly, in all material respects with its material obligations and enforce all of its material rights under all Project Documents, except:
- (a) in the case of Project Documents (other than the Major Project Documents) where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and
  - (b) in the case of any Resort Management Agreement, where the failure to comply could not reasonably be expected to threaten the Concession Contract or the Land Concession Contract.
- 17.3 From time to time obtain, maintain, retain, observe, keep in full force and effect and comply (and ensure each other Obligor from time to time obtains, maintains, retains, observes, keeps in full force and effect and complies) in all material respects with the terms, conditions and provisions of all Permits made or issued by or with a Governmental Authority as shall now or hereafter be necessary under applicable laws.
- 17.4 Comply (and ensure each of its Affiliates and, where relevant, each Major Project Participant complies) with all Legal Requirements related to the Land Concession Contract and the Concession Contract.
18. **Pari Passu Ranking** - Procure that the obligations of the Company and each other Obligor under the Senior Finance Documents do and shall rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.
19. **Further Assurances** - From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as any of the Intercreditor Agent or the Security Agent may reasonably request.

for the purposes of implementing or effectuating the provisions of the Senior Finance Documents, or of more fully perfecting or renewing the rights of the Senior Secured Creditors with respect to the Project Security (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other Property acquired after the date of the Senior Finance Documents by the Company or any other Obligor which may be deemed to be part of the Project Security) pursuant to the Senior Finance Documents. Upon the exercise by the Intercreditor Agent, the Security Agent or any other Senior Secured Creditor of any power, right, privilege or remedy pursuant to any of the Senior Finance Documents which requires any consent, approval, notification, registration or authorisation of any Governmental Authority, the Company shall execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Intercreditor Agent, the Security Agent or such Senior Secured Creditor may reasonably be required to obtain from the Company or any other Obligor for such governmental consent, approval, notification, registration or authorisation.

20. **Diligent Construction of the Project** - The Company shall take or cause to be taken all action, make or cause to be made all contracts and do or cause to be done all things necessary to construct the Projects diligently and in accordance with the relevant construction contracts, and the Plans and Specifications, the Project Schedule and the other Transaction Documents.
21. **Retainage Amounts** - Withhold or cause to be withheld from each Contractor party to a Major Project Document such retainage from any payment to be made to such Contractor as is permitted by such Major Project Document.
22. **Preserving Project Security** - Undertake and cause the other Obligors to undertake, all actions which are necessary or appropriate in the reasonable judgment of the Intercreditor Agent to:
  - (a) maintain the Senior Secured Creditors' respective security interests under the Security Documents in the Project Security in full force and effect at all times (including the priority thereof); and
  - (b) preserve and protect the Project Security and protect and enforce the Company's or, as the case may be, other Obligor's rights and title and the respective rights of the Senior Secured Creditor to the Project Security,

including the making or delivery of all filings and registrations; the payments of fees and other charges, the issuance of supplemental documentation; the discharge of all claims or other liens other than Permitted Liens adversely affecting the respective rights of the Senior Secured Creditors to and under the Project Security and the publication or other delivery of notice to third parties.

23. [Not used]

24. **Termination of Concession Contract** - Notify the Intercreditor Agent promptly upon receiving:

- (a) notice of any consultations with the Macau SAR as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement in relation to any termination of the Concession Contract;
- (b) notice of any consultations with the Macau SAR as contemplated by paragraph C1 of the Land Concession Consent Agreement in relation to any termination or rescission of the Land Concession Contract;
- (c) notice of any negotiations with the Macau SAR pursuant to article 83 of the Concession Contract;
- (d) any notice from the Macau SAR pursuant to clause 3 of article 80 of the Concession Contract; or
- (e) any notice from the Macau SAR pursuant to clause 4 of article 80 of the Concession Contract.

and keep the Intercreditor Agent fully apprised thereof.

25. **Capital Expenditures**

In respect of any:

- (a) contract to be entered into in respect of Capital Expenditure by any Obligor with a total contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD25,000,000 or its equivalent; or
- (b) series of contracts (whether related or not) entered into, or to be entered into, in respect of Capital Expenditure by any Obligor in any Fiscal Year which when taken together have a total contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which may otherwise involve liabilities, actual or contingent, in an aggregate amount in excess of USD25,000,000 or its equivalent.

deliver to the Intercreditor Agent:

- (1) a certificate of a Responsible Officer of the Company certifying that it has sufficient Funds to achieve construction completion of the Projects and to pay the total contract price payable and satisfy any other existing or future liabilities, claims or other obligations of any kind under or in respect of the relevant contract to be entered into or otherwise; and

- (2) such other substantiating information and evidence in respect of the relevant contract or contracts that the Intercreditor Agent (acting on the instructions of any Lender) may reasonably require.

26. **Sufficiency of Funds**

Ensure that it together with each other Obligor has, at all times, sufficient Funds to achieve construction completion of the Projects and satisfy any other existing or future liabilities, claims or other obligations of any kind.

27. **Additional Obligors**

- 27.1 Procure that each of its and each other Obligor's, direct or indirect, Subsidiaries (other than any Excluded Subsidiary) becomes an Obligor within 15 days of the formation, creation or acquisition of such Subsidiary. That Subsidiary shall become an additional Obligor if:

- (a) the Required Lenders approve the addition of that Subsidiary;
- (b) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Obligor;
- (c) the Company is in compliance with the provisions of paragraph 27.3 below; and
- (d) the Intercreditor Agent has received (in form and substance satisfactory to the Intercreditor Agent) all of the documents and other evidence required by it in relation to the relevant Subsidiary including (without limitation):
  - (i) accession by the relevant Subsidiary to the Sponsors' Subordination Déed and the Wynn Pledgors' Guarantee; and
  - (ii) any other documentation and evidence required by the Intercreditor Agent to ensure that the relevant Subsidiary makes such representations and warranties and is subject to such obligations under the terms of the Senior Finance Documents and grants such Liens in respect of its Property;

in each case, on such terms and by such instrument or combination of instruments, as the Intercreditor Agent deems necessary or desirable.

- 27.2 The Intercreditor Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence referred to in paragraph 27.1(d) above.

- 27.3 By not less than 10 Business Days' prior written notice to the Intercreditor Agent, notify the Intercreditor Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an additional Obligor pursuant to paragraph 27.1.

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27.4 Following the giving of any notice pursuant to paragraph 27.2 above, if the accession of such additional Obligor obliges the Intercreditor Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, promptly upon the request of the Intercreditor Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Intercreditor Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an additional Obligor.

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**Part B - Negative Covenants**

The Company shall not directly or indirectly:

**1. Financial Condition Covenants**

- (a) *Leverage Ratio* - Permit the Leverage Ratio as at the last day of any period of four full consecutive Fiscal Quarters ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Leverage Ratio</u>
First Quarterly Date	3.75:1
Second Quarterly Date	4.00:1
Third and Fourth Quarterly Dates	4.25:1
Fifth Quarterly Date	4.50:1
Sixth Quarterly Date	4.75:1
Seventh, Eighth, Ninth, Tenth and Eleventh Quarterly Dates	5.00:1
Twelfth Quarterly Date	4.75:1
Thirteenth Quarterly Date	4.50:1
Fourteenth and Fifteenth Quarterly Dates	4.00:1
Sixteenth and Seventeenth Quarterly Dates	3.75:1
Eighteenth Quarterly Date and each Quarterly Date thereafter	3.50:1

*provided that, for purposes of calculating EBITDA pursuant to this paragraph 1(a) for any period which is less than four full Fiscal Quarters, EBITDA shall be calculated on an annualised basis.*

- (b) *Interest Coverage Ratio* - Permit the Interest Coverage Ratio for each period of four full consecutive Fiscal Quarters ending on each Quarterly Date to be less than 2.0:1 at any time.

**2. Limitation on Financial Indebtedness**

2.1 Create, incur, assume or suffer to exist (or permit any other Obligor to create, incur, assume or suffer to exist) any Financial Indebtedness, except:

- (a) Financial Indebtedness of the Company created under any Senior Finance Document, the Performance Bond Facility, any Shareholder Loan, any Subordinated Debt or any Guarantee Obligations represented by the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract;
- (b) Financial Indebtedness of the Company (including Capital Lease Obligations) secured by Liens permitted by paragraph 3 (I) of this Part B provided that any recourse in respect of such Financial Indebtedness is limited solely to the Property secured by such Liens;
- (c) Financial Indebtedness of the Company in an aggregate principal amount not to exceed USD10,000,000 or its equivalent at any time;

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- (d) Financial Indebtedness of the Company incurred for the purpose of repaying the balance of the principal amount owing to all Lenders *provided* the Intercreditor Agent is satisfied that upon the incurrence of such Financial Indebtedness or immediately thereafter the Release Date (without reference to paragraph (b) of the definition of Release Date) will occur;
- (e) Financial Indebtedness of the Company created, incurred, assumed or suffered to exist during the period on and following the Expansion Opening Date *provided* that the Leverage Ratio as at the most recent Quarterly Date, if determined on a *pro forma* basis after giving effect to the creation, assumption or sufferance to exist of such Financial Indebtedness (when taken together with all such other Financial Indebtedness of the Company permitted pursuant to this paragraph 2.1(e)), would not exceed the ratio set forth opposite that Quarterly Date in paragraph 1(a);
- (f) Financial Indebtedness of the Company:
- (i) in an aggregate principal amount not to exceed USD50,000,000 or its equivalent;
  - (ii) on terms no more favourable to any creditor than those to which the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement are subject (*provided that* such Financial Indebtedness will be tranching as agreed between the Company and all the creditors (A) between US dollars and Hong Kong dollars and (B) further tranching (if required) to address any requirements of any creditor for its participations thereunder to be applied solely to finance costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming); and
  - (iii) *provided* (x) each creditor has executed and delivered to the Intercreditor Agent a duly completed Additional Lender's Accession Deed and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent), whereupon, *provided* the other conditions of this paragraph 2.1(f) have also been satisfied, such creditor shall become a party hereto as an Additional Lender and that creditor and each of the other parties hereto shall assume obligations towards, and acquire rights against, one another accordingly or (y) the Financial Indebtedness is otherwise on terms satisfactory to the Intercreditor Agent concerning the relationship between each creditor and the Senior Secured Creditors, including the exercise of rights against the Company and any other Obligor and the sharing and enforcement of the Security and any other liens over Property of the Company or any other Obligor;

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- (g) Financial Indebtedness of a wholly owned Subsidiary of the Company which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5 (an "Obligor Subsidiary") to any other Obligor Subsidiary or to the Company; and
  - (h) other Financial Indebtedness approved in writing by the Intercreditor Agent,
- (together, "Permitted Financial Indebtedness").

3. **Limitation on Liens**

Create, incur, assume or suffer to exist (or permit any other Obligor to create, incur, assume or suffer to exist) any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

- (a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the Company and the relevant Obligor in conformity with applicable GAAP;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Project Security on account of such Lien);
- (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation *provided* that if such pledges are being contested, appropriate reserves (determined in accordance with the applicable GAAP) are maintained on the books of the Company and the relevant Obligor;
- (d) deposits by or on behalf of the Company (or the Obligor) to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Company (or the Obligor);
- (f) Liens created pursuant to paragraph 15.2 of Part A of this Schedule 5;
- (g) Liens created pursuant to the Security Documents;
- (h) licenses of patents, trademarks and other intellectual property rights granted by the Company (or the Obligor) in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Company (or the Obligor);

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- (i) any attachment or judgment Lien not constituting an Event of Default;
  - (j) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
  - (k) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Site and Site Easements;
  - (l) Liens securing Financial Indebtedness of the Company incurred pursuant to paragraph 2.1(b) of this Part B to finance the acquisition of fixed or capital assets *provided* that:
    - (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Financial Indebtedness as otherwise permitted hereunder);
    - (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other disposition thereof) financed by such Financial Indebtedness; and
    - (iii) the Property financed by such Financial Indebtedness is not of a type that will become affixed to the Site or the other Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of either Project;
  - (m) Liens on cash deposited with, or held for the account of, the Company securing reimbursement obligations owing by the Company and permitted to be incurred by it pursuant to paragraph 2.1(c) above under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments or the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract, granted in favour of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash used as security for such reimbursement obligations is invested (if at all) in Permitted Investments only (to the extent the Company has the right to direct the investment thereof) and is segregated from the Company's general cash accounts so that such Liens attach only to such cash and Permitted Investments and (ii) the amount of cash and/or Permitted Investments secured by such Liens does not exceed 110% of the amount of the Financial Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments);
  - (n) without prejudice to Schedule 6 (*Accounts*), Liens arising by reason of any netting or set-off arrangements entered into by the Company in the normal course of its banking arrangements and the standard account operating procedures of the bank for the purpose of netting debit and credit balances;

- (o) Liens arising under title transfer or retention of title arrangements entered into by the Company in the normal course of its trading activities on the counterparty's standard or usual terms *provided* that such arrangements shall be limited to Property of an aggregate value not exceeding USD1,000,000 or its equivalent; and
- (p) other Liens approved in writing by the Intercreditor Agent.

4. **Limitation on Fundamental Changes**

Enter (and ensure no other Obligor shall enter) into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that the Company may dispose of any of its Property in accordance with paragraph 5 of this Part B.

5. **Limitation on Disposition of Property**

Dispose (and ensure no other Obligor shall dispose) of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any Capital Stock to any Person, except:

- (a) the Disposition for fair market value on arm's length commercial terms in the ordinary course of business of any Property or obsolete or worn out Property or Property no longer used or useful in the business of the Company or the Obligor *provided* that such Disposition could not reasonably be expected to materially adversely affect either Project or any of the Project Security and either:
  - (i) the Net Cash Proceeds from the disposal of all such Property (excluding shares in any Obligor) do not exceed in aggregate an amount equal to USD50,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year; or
  - (ii) where such Net Cash Proceeds referred to in sub-paragraph (i) above exceed in aggregate an amount equal to USD50,000,000 or its equivalent in any Fiscal Year (when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year), such Net Cash Proceeds are reinvested within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business (and pending such reinvestment are deposited and retained in an Account) and, if such Net Cash Proceeds are not so reinvested within 12 months of receipt, are applied in mandatory prepayment of the Advances pursuant to paragraph 2 of Schedule 9 (*Mandatory Prepayment*);
- (b) the Disposition of cash (in each case in transactions otherwise permitted under this Agreement), Investments permitted pursuant to paragraph 8 of this Part B, inventory (in the ordinary course of business), receivables (in connection with the collection thereof and otherwise as customary in business activities of the type conducted by the Company) and cash or non-cash prizes and other complimentary items for customers customary in business activities of the type conducted by the Company;

- (c) the sale or issuance of the Company's or any other Obligor's Capital Stock (other than Disqualified Stock) to its direct Shareholders *provided* that such Capital Stock is fully paid upon such issuance (or, as the case may be, sale) and is subject to the Liens created under the Company Share Pledge or such other Liens created under the Senior Finance Documents with regard to such other Obligor's Capital Stock;
- (d) the Company may enter into any leases or licences with respect to any space on or within the Site Facilities where the entry into of such leases or licences is permitted by the terms of the Senior Finance Documents;
- (e) any Property purchased using the Company's Subconcession proceeds (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (f) any Property associated with an Excluded Subsidiary or Excluded Projects (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (g) any Property associated with Resort Management Agreements (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (h) the incurrence of Liens permitted under paragraph 3 of this Part B;
- (i) any Event of Eminent Domain *provided* that the requirements of Schedule 9 (*Mandatory Prepayment*) are complied with in connection therewith;
- (j) subject to compliance with paragraph 17 of this Part B, the Company may enter into Subconcessions; or
- (k) any Disposition not falling within any of the preceding sub-paragraphs of this paragraph 5 made with the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld).

6. **Limitation on Restricted Payments**

- 6.1 (a) Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund (and ensure each other Obligor which is a Subsidiary of the Company shall not declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund) for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Company (including any Equity) or such other Obligor, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Company or such other Obligor;

- (b) enter (and ensure each other Obligor which is a Subsidiary of the Company shall not enter) into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "Derivatives Counterparty") obligating the Company or such other Obligor to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock;
- (c) make any repayment of, or pay any interest on or other amount in respect of (and ensure each other Obligor shall not make any repayment of, or pay any interest on or other amount in respect of) the Performance Bond Facility or any other Subordinated Debt (including any Equity);
- (d) make any payment of IP Fees;
- (e) make any payment of Corporate Administrative Fees; or
- (f) take any action or make any payment permitted pursuant to, or in connection with any transaction permitted pursuant to, paragraph 10 of this Part B.

(collectively, "Restricted Payments") except (i) to the extent constituting payment of any Restricted Payment by any wholly owned Subsidiary of the Company (other than any Excluded Subsidiary), which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5, to the Company or (ii) the Company may:

- (i) pay dividends, distributions or other payments if (A) permitted under paragraphs 6.2 or 17(d) of this Part B or (B) made using any amounts derived from or under (i) any Resort Management Agreement or (ii) any Excluded Project or Excluded Subsidiary;
- (ii) make payments permitted in accordance with the Deed of Appointment and Priority;
- (iii) pay Approved IP Fees and Approved Corporate Administrative Fees *provided* that, in each case, no Event of Default has occurred and is continuing or would result from such payment; and
- (iv) pay to any of its Affiliates the direct cost incurred by that Affiliate (excluding any administration charges, handling fees, mark-ups or any other fees, costs, charges or impositions of a similar nature levied, imposed or charged by that Affiliate) for the acquisition of any assets, or the procurement or any services, to be used by the Company in its Permitted Business.

6.2 At any time after the first Quarterly Date, the Company may declare and/or pay at the times set out in paragraph 6.3 of this Part B by way of dividend or other distribution or make other Restricted Payments, subject to compliance with applicable Legal Requirements and *provided* that all of the following conditions have been satisfied:

- (i) no Event of Default has occurred and is continuing or might reasonably be expected to occur as a result of the declaration and/or payment of such dividend or other distribution or Restricted Payment; and

(ii) had such declaration, payment, distribution or other Restricted Payment been made immediately prior to the most recent Quarterly Date, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5.

6.3 Any payment or making of dividends or other distribution or Restricted Payment under paragraph 6.2 of this Part B may be made once in each Fiscal Quarter (or such other date or with such other frequency as may be agreed by the Intercreditor Agent) *provided that* where such payment or making of dividends or other distributions or Restricted Payments is proposed to be made in the Fiscal Quarter immediately following the end of the previous Fiscal Year, that payment or making of dividends or other distributions or Restricted Payments shall be made after the date of prepayment of Advances under the Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*).

6.4 The financial ratios set out in paragraph 6.2 of this Part B shall be tested by reference to the financial statements of the Company delivered pursuant to paragraph 1(a) of Part A of this Schedule 5 and/or each Compliance Certificate delivered pursuant to paragraph 2(a) of Part A of this Schedule 5.

7. [Not used]

8. **Limitation on Investments**

Make (and ensure that no other Obligor shall make) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

- (a) Investments by the Company in any of its wholly owned Subsidiaries (other than any Excluded Subsidiary) which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5;
- (b) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project casino and gaming operations consistent with ordinary course gaming operations) *provided that* such extensions are in compliance with all Legal Requirements;
- (c) Permitted Investments;
- (d) Investments made using any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary;

- (e) Investments in any Excluded Subsidiary or Excluded Project or any third party whose primary business is the development, construction, ownership and operation of hotel resorts and casinos, using the proceeds of any Advance under the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement;
- (f) loans and advances to employees of the Company in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (g) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to the Company or in satisfaction of judgments; and
- (h) in addition to Investments otherwise expressly permitted by this paragraph 8, so long as no Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Company in an aggregate amount (valued at cost) not to exceed USD10,000,000 or its equivalent at any one time outstanding.

**9. Limitation on Optional Payments and Modifications of Governing Documents**

- (a) Make or offer to make (and ensure no other Obligor makes or offers to make) any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Financial Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating the Company to make payments to such Derivatives Counterparty as a result of any change in market value of such Financial Indebtedness, other than the prepayment of (i) Financial Indebtedness incurred under the Senior Finance Documents in accordance with the terms of the Senior Finance Documents or (ii) Permitted Financial Indebtedness (excluding any Subordinated Debt); or
- (b) amend or modify, or permit the amendment or modification of (and ensure no other Obligor amends, modifies or permits the amendment or modification of) its Governing Documents in any manner adverse to any of the Secured Creditors (other than where such amendment or modification could not reasonably be expected to have a Material Adverse Effect).

**10. Limitation on Transactions with Affiliates**

Enter (and ensure that no other Obligor shall enter) into any single transaction or series of transactions, whether related or not (including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, the entry into of any contract or the amendment, novation, supplementation, extension or restatement of any existing contract) with any Affiliate of the Company unless:

- (a) (i) all amounts payable by any Obligor thereunder or in respect thereof have been subordinated in accordance with the Sponsors' Subordination Deed and that Obligor and the relevant Affiliate counterparty to such transaction have acceded to the Sponsors' Subordination Deed (in each case, on such terms and by such instrument or combination of instruments, as the Intercreditor Agent deems necessary or desirable) and such Obligor and the relevant Affiliate counterparty have delivered to the Intercreditor Agent a legal opinion, in form and substance satisfactory to the Intercreditor Agent, issued by legal counsel acceptable to the Intercreditor Agent (acting reasonably) or (in respect of a Macau SAR or Nevada incorporated Obligor or Affiliate counterparty) issued by (if that General Counsel is admitted, in accordance with all applicable Legal Requirements, to practise law in Macau SAR or Nevada, as the case may be) the General Counsel of Wynn Resorts (for such Nevada Obligor or Affiliate counterparty) or the General Counsel of the Company (for such Macau SAR Obligor or Affiliate counterparty), in each case in respect of such Person's obligations under the Sponsors' Subordination Deed;

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- (ii) the relevant transaction is a genuine commercial transaction on terms that are not less favourable to the Company than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Company; and
  - (iii) in respect of:
    - (1) any transaction which has (or as a result of any amendment, novation, supplementation, extension or restatement of any existing contract would have) a total amount or contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which otherwise involves liabilities, actual or contingent, in an aggregate amount in excess of USD25,000,000 or its equivalent in any Fiscal Year; or
    - (2) any series of transactions (whether related or not) which when taken together have (or as a result of any amendment, novation, supplementation, extension or restatement of any existing contract would have) a total amount or contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which otherwise involves liabilities, actual or contingent, in an aggregate amount in excess of USD25,000,000 or its equivalent in any Fiscal Year.

deliver to the Intercreditor Agent:

- (a) a certificate of a Responsible Officer of the Company certifying that it has sufficient Funds to achieve construction completion of the Projects and to pay the total transaction price payable and satisfy any other existing or future liabilities, claims or other obligations of any kind under or in respect of the relevant transaction or transactions to be entered into or otherwise; and
  - (b) such other substantiating information and evidence in respect of the relevant transaction or transactions that the Intercreditor Agent (acting on the instructions of any Lender) may reasonably require; or
- (b) the relevant transaction is between the Company and its wholly owned Subsidiary (other than any Excluded Subsidiary) which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5.

**11. Limitation on Sales and Leasebacks**

Save as permitted pursuant to paragraph 5 of this Part B, enter (and ensure that no other Obligor shall enter) into any arrangement with any Person providing for the leasing by the Company or such other Obligor as lessee of Property which has been or is to be sold or transferred by the Company or such other Obligor to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of the Company or such other Obligor.

**12. Limitation on Changes in Fiscal Periods**

Permit the Fiscal Year of the Company or any other Obligor to end on a day other than December 31 or change the Company's or any other Obligor's method of determining Fiscal Quarters.

**13. Limitation on Negative Pledge Clauses**

Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability (and ensure that no other Obligor enters into or suffers to exist or become effective any agreement that prohibits or limits the ability) of the Company or any other Obligor to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations other than:

- (a) the Senior Finance Documents;
- (b) the Concession Contract;
- (c) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and proceeds thereof); and
- (d) as required by applicable Legal Requirements.

**14. Limitation on Lines of Business**

- 14.1 Enter (and ensure that no other Obligor enters) into any business activities, whether directly or indirectly, other than Permitted Businesses.
- 14.2 Establish (and ensure that no other Obligor establishes) any representative office other than (in the case of the Company) marketing offices or other place of business in a jurisdiction outside the Macau SAR or its place of incorporation unless (in the case of the Company) such office or place of business has been notified to the Intercreditor Agent, the requirements of paragraph 15 of Part A of this Schedule 5 have been satisfied in respect of any Property of the Company which may at any time be located in such jurisdiction within 30 days of such establishment and the Company has taken all such steps as may be required in such jurisdiction to perfect, maintain and protect the Security.

**15. Restrictions on Changes**

**15.1 Concession Contract and Land Concession Contract**

Notwithstanding any other provision of this paragraph 15, agree to any amendment to or termination of, or assign, transfer, cancel or waive any of its rights under the Concession Contract or the Land Concession Contract without obtaining the prior written consent of the Intercreditor Agent (other than any mechanical or administrative amendments of which reasonable prior notice has been given and which could not reasonably be expected to be prejudicial to the Finance Parties required by any Macau Governmental Authority).

**15.2 Permits and Other Contracts**

15.2.1 Directly or indirectly enter into, amend, modify, terminate, supplement or waive a right or permit or consent to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or give any consent or exercise any other discretion under (and ensure that no other Obligor directly or indirectly enters into, amends, modifies, terminates, supplements or waives a right or permits or consents to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or gives any consent or exercises any other discretion under):

- (a) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect;
- (b) the Prime Contractor's Completion Guarantee or the Prime Contractor's Performance Bond; or
- (c) any Project Document, Major Project Document or other contract unless in the case of the Company or any of the Company's wholly owned Subsidiaries which are members of the Restricted Group (I) it could not reasonably be expected to have a Material Adverse Effect and (2) in respect of any: (A) contract to be entered into with, or any existing

contract which as a result of amendment, novation, supplementation, extension or restatement has, a total contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which has or may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD25,000,000 or its equivalent in any Fiscal Year or (B) series of contracts (whether related or not) to be entered into, or any series of contracts (whether related or not) which has been entered into which as a result of amendment, novation, supplementation, extension or restatement would have, when taken together a total contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which has or may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD25,000,000 or its equivalent in any Fiscal Year, the Company delivers to the Intercreditor Agent: (X) a certificate of a Responsible Officer of the Company certifying that it has sufficient Funds to achieve construction completion of the Projects and to pay the total contract price payable and satisfy any other existing or future claims, liabilities or other obligations of any kind under or in respect of the relevant contract to be entered into or otherwise and (Y) such other substantiating information and evidence in respect of the relevant contract that the Intercreditor Agent (acting on the instructions of any Lender) may reasonably require.

without in each case obtaining the Intercreditor Agent's prior written consent (which consent shall not be unreasonably withheld). Notwithstanding any of the foregoing, the Company may only take or, as the case may be, permit or consent to the taking of, any such action under or in respect of, or otherwise agree to any variation to the Project Works or the Plans and Specifications or any other variation to the Construction Contract without the prior written consent of the Intercreditor Agent where:

- (1) the actions or variations do not involve any extension of the Guaranteed Dates of Substantial Completion for the Original Project (beyond that effective prior to the variations); and
- (2) no Material Adverse Effect could reasonably be expected to result therefrom.

and the Intercreditor Agent has received a certificate from the Company signed by a Responsible Officer certifying that the conditions set out in subparagraphs (1) and (2) above have been satisfied.

15.2.2 Accept, agree or determine the achievement of or waive any requirement in respect of (or be deemed to have done any of the foregoing) or issue, accept, or be deemed to have confirmed any certificate or notice of "Original Project Substantial Completion" in respect of all or any part of the Original Project under article 12 of the Construction Contract without the written approval of the Intercreditor Agent (such approval not to be unreasonably withheld or, without prejudice to any other provision of this Agreement, delayed).

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- 15.2.3 Reduce the level of Retainage Amounts withheld pursuant to section 5.6 of the Construction Contract or paragraph 21 of Part A of this Schedule 5 except in accordance with the Construction Contract.
  - 15.2.4 Fail to withhold a sum equal to 100% of the costs reasonably estimated by the Company (and confirmed by the Technical Adviser) as necessary to complete "Original Project Punch List Items" or, as the case may be, "Expansion Project Punch List Items" (as defined in the Construction Contract) as Retainage Amounts pursuant to section 5.7 of the Construction Contract unless such retention is not permitted under applicable laws.
  - 15.2.5 Accept any non-conforming "Work" (as defined in the Construction Contract) of a material nature unless the Company shall have complied with the requirements of paragraph 15.2.1 of this Part B.
  - 15.2.6 Accept or agree to any increase in the "Original Project Contractor's Fee" or the "Expansion Project Contractor's Fee" (as defined in the Construction Contract) for any reason, except to the extent required pursuant to section 18.5 of the Construction Contract following compliance with paragraph 15.2.1 of this Part B or such increase is paid from the proceeds of additional Equity (other than any Equity required to be paid or advanced in accordance with the terms hereof).

**16. Limitation on Formation and Acquisition of Subsidiaries**

Without the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld), form, create or acquire (and ensure that no other Obligor forms, creates or acquires) any direct or indirect Subsidiary other than any Obligor or (in the case of the Company and the Company's Subsidiaries) any Excluded Subsidiary.

**17. Limitation on Subconcessions**

Grant or enter into any Subconcession unless:

- (a) no breach of the Concession Contract shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession;
- (b) no Event of Default shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession (or immediately after any renewal or extension thereof at the option of the Company);
- (c) such Subconcession and any business or other activities carried out pursuant thereto shall be self-contained and shall not adversely affect the operation of the Projects (excluding the ability of the Company to grant further Subconcessions), no breach or termination thereof shall result in a breach or an entitlement to terminate the Concession Contract, the Company shall have no responsibility nor any liability, actual or contingent, for the performance by the subconcessionaire of its obligations under or in respect of the Subconcession

and, subject to receipt by the Intercreditor Agent of evidence reasonably satisfactory to it, neither the Subconcession nor any business or other activities carried out pursuant thereto could otherwise reasonably be expected to materially interfere with, impair or detract from the operation of the Projects or otherwise have a Material Adverse Effect; and

- (d) if any cash or cash proceeds are paid or received in respect of the grant or entry into such Subconcession, it shall first be deposited into an Account and, after deduction and payment therefrom of all Taxes, costs and expenses incurred in connection with such payment, receipt, grant or entry, may thereafter be used, applied, dividended or otherwise distributed by the Company and applied in its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that no Default has occurred and is continuing. Notwithstanding any provisions contained in the Senior Finance Documents to the contrary, upon receipt of any funds distributed by the Company in accordance with this paragraph 17 by any Wynn Obligor, such Wynn Obligor shall also be entitled to use, apply, dividend or otherwise distribute such funds in its discretion (subject to compliance with applicable Legal Requirements).

**18. Limitation on Sale or Discount of Receivables**

Except as permitted pursuant to paragraph 5(b) of this Part B, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof (and ensure that no other Obligor, directly or indirectly, sells with recourse, or discounts or otherwise sells for less than the face value thereof) any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

**19. Compliance**

Use or permit the use of the Projects in any manner that could result in such use becoming a non-conforming use under any applicable land use law, rule or regulation.

**20. [Not used]**

**21. Amendment to Transaction Documents**

Enter (and ensure that no other Obligor enters) into any agreement (other than the Senior Finance Documents) restricting its ability to amend any of the Transaction Documents.

**22. No Other Powers of Attorney**

Execute or deliver (and ensure that no other Obligor executes or delivers) any agreement creating any powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Transaction Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Security Documents or are required to be executed or delivered in the Company's or such other Obligor's ordinary course of business.

**23. [Not used]**

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24. [Not used]

25. **Casino and Gaming Zone Areas**

Designate any area (other than the horizontal property identified as comprising the casino in the Plans and Specifications as at the Signing Date) as a casino or gaming zone unless such designation would not cause the aggregate area which is classified as casino or gaming zones by the Macau SAR to exceed 40,000m<sup>2</sup> in respect of the Original Project and the Expansion and the Intercreditor Agent has received evidence that, in the event of the reversion of such area to the Macau SAR upon termination of the Concession Contract, such reversion would not materially affect the ongoing operation of the Hotel Project.

26. **Junkets**

Enter into or permit to subsist any arrangement with any gaming junket-tour promoters, directors or cooperators unless such Persons and any such arrangement are in compliance with the requirements of the Concession Contract and all other applicable Legal Requirements and the Company shall monitor the activities of such Persons in regard to such arrangements and shall take all necessary or appropriate reasonable measures to ensure such compliance.

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## SCHEDULE 6

### ACCOUNTS

#### 1. Accounts

##### 1.1 Accounts

The members of the Restricted Group shall maintain in accordance with the requirements of this Schedule 6 and the Senior Finance Documents, operating, disbursement and other accounts (which as of the Second Amendment Signing Date comprise of the following bank accounts maintained by the Company:

- (a) an account denominated in US dollars opened in Macau and designated "Hotel Facility USD Disbursement Account"
- (b) an account denominated in HK dollars opened in Macau and designated "Hotel Facility HKD Disbursement Account"
- (c) an account denominated in US dollars opened in Macau and designated "Project Facility USD Disbursement Account"
- (d) an account denominated in HK dollars opened in Macau and designated "Project Facility HKD Disbursement Account"
- (e) an account denominated in US dollars opened in Nevada and designated "USD Operating Account"
- (f) an account denominated in US dollars opened in Macau and designated "USD Operating Account"
- (g) an account denominated in HK dollars opened in Macau and designated "HKD Operating Account"
- (h) an account denominated in Patacas opened in Macau and designated "MOP Operating Account"
- (i) an account denominated in US dollars opened in Macau and designated "USD Debt Service Account"
- (j) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Account"
- (k) an account denominated in US dollars opened in Macau and designated "USD Debt Service Reserve Account"
- (l) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Reserve Account"
- (m) an account denominated in Patacas opened in Macau and designated "Special Gaming Tax Account"

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- (n) an account denominated in Patacas opened in Macau (being the account referred to in paragraph B6 of the Gaming Concession Consent Agreement) and an account denominated in US dollars opened in Macau, together designated "Compensation Proceeds Account"
  - (o) an account opened in Macau and designated "Upfront Premium Account" and
  - (p) an account denominated in HK dollars and an account denominated in Patacas each opened in Macau and designated "Construction Disbursement Account"),

in each case, subject to Security under the relevant Senior Finance Documents and each, for the purposes of the Senior Finance Documents, also an Account.

Any member of the Restricted Group may open one or more additional operating, disbursement or other accounts *provided* that such accounts satisfy the requirements of the definition of "Account" in Clause 1.1.

#### 1.2 Maintenance of Accounts

The Accounts shall, save as otherwise provided by the Charges over Accounts, the Account Bank Notices and Acknowledgements or herein, be maintained by the relevant member of the Restricted Group with the relevant Account Bank in accordance with the Account Bank's usual practice and may from time to time be sub-divided into such sub-accounts as that member of the Restricted Group may reasonably request.

#### 1.3 Restrictions

Each member of the Restricted Group shall maintain each of its Accounts (and shall procure that each other Account is maintained) as a separate account with the relevant Account Bank and:

- (a) none of the restrictions contained in this Schedule on the withdrawal of funds from Accounts shall affect the obligations of any Obligor to make any payments of any nature required to be made to the Senior Secured Creditors on the due date for payment thereof in accordance with any of the Senior Finance Documents; and
- (b) no withdrawal shall be made from any Account if it would cause such account to become overdrawn.

#### 1.4 Credits to Accounts

Save as otherwise provided in any of the Security Documents after enforcement thereof, each member of the Restricted Group shall credit, and shall procure that there is credited, to the Accounts all such amounts as are provided for in this Agreement and ensure that such other credits are made thereto as are required to be made pursuant to any other provision of any other Senior Finance Document.

1.5 Interest

Each amount from time to time standing to the credit of each Account (for the avoidance of doubt excluding amounts for the time being applied in acquiring Permitted Investments) shall bear interest at such rate as may from time to time be agreed between the relevant member of the Restricted Group and the relevant Account Bank, and the relevant member of the Restricted Group shall ensure that such interest is credited to such account at such time or times as may be agreed from time to time between that member of the Restricted Group and the Account Bank or, failing agreement, in arrears on 31 December.

1.6 Payments

Save as otherwise provided in this Agreement or pursuant to the Charges over Accounts, the Account Bank Notices and Acknowledgements or any other relevant Security Document, no party shall be entitled to require any Account Bank to make any payment out of the amount standing to the credit of any Account maintained with it.

1.7 Other Accounts

No member of the Restricted Group will open or maintain any accounts other than:

- (a) the Accounts; and
- (b) any account opened by the Company for the deposit of any amounts derived from or under (i) subject to paragraph 17 of Part B of Schedule 5, the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary.

except with the prior approval of the Intercreditor Agent.

2. Permitted Investments

2.1 Power of Investment

The Company may require, subject as provided in this Agreement, that such part of the amounts outstanding to the credit of any Account as it considers prudent shall be invested from time to time in Permitted Investments in accordance with this paragraph 2.

2.2 Procedure for Investment

- 2.2.1 Unless held for the account of the Company or other member of the Restricted Group and secured by first ranking fixed charge in favour of the Security Agent pursuant to a Charge over Accounts, the Company shall ensure that all Permitted Investments are made in the name of the Company and secured by a first ranking fixed lien in favour of the Security Agent in such form and on such terms as the Intercreditor Agent may reasonably require.
- 2.2.2 The Company will at all times seek to match the maturities of the Permitted Investments made out of moneys standing to the credit of an Account having regard to the availability of Permitted Investments which are readily marketable, and shall liquidate (or procure that there are liquidated) Permitted Investments to the extent necessary for the purposes of payment of any amount due under the Senior Finance Documents.

2.2.3 The Company shall ensure that all documents of title or other documentary evidence of ownership with respect to Permitted Investments made out of any Account are held in the possession of the Security Agent and, if any such document or other evidence comes into the possession or control of the Company or any other Obligor, it shall procure that the same is delivered immediately to the Security Agent.

2.3 Realisation

2.3.1 The Company shall ensure that, whenever any Investment Proceeds or Investment Income is received in respect of a Permitted Investment made from amounts standing to the credit of an Account the Investment Proceeds and the Investment Income are:

- (a) reinvested in further Permitted Investments; or
- (b) paid into the relevant Account from which the Permitted Investment derives

2.3.2 The Company shall give (and shall ensure that each other Obligor gives) directions to the relevant Account Bank under paragraph 2.3.1 of this Schedule 6 and otherwise exercise its rights hereunder in such manner as will ensure compliance with the applicable provisions of the Senior Finance Documents with respect to Accounts, Permitted Investments, Investment Proceeds and Investment Income.

2.4 Non-qualifying criteria

If any Permitted Investment ceases to be a Permitted Investment, the Company will upon becoming aware thereof procure that the relevant investment is replaced by a Permitted Investment or by cash.

2.5 Accounts include Permitted Investments

2.5.1 Subject to sub-paragraph 2.5.2 of this Schedule 6, any reference herein to the balance standing to the credit of one of the Accounts will be deemed to include a reference to the Permitted Investments in which all or part of such balance is for the time being invested. In the event of any dispute as to the value of the credit of an Account pursuant to this paragraph 2.5, that value shall be determined in good faith by the Intercreditor Agent. If the Company so requests, the Intercreditor Agent will give the Company details of the basis and method of that determination.

2.5.2 If the amount standing to the credit of any Account (excluding for this purpose any amount deemed to be included pursuant to sub-paragraph 2.5.1 of this Schedule 6) is insufficient to make a payment under the Senior Finance

Documents when due out of such Account, the Security Agent is authorised, in its discretion and without any liability for loss or damage thereby incurred by the Company or any other Obligor, to require the relevant Account Bank or, as the case may be, the Company to sell or otherwise realise, or to enter into any exchange transaction with respect to, (or, as the case may be, to require the Company to ensure any other Obligor so sells or otherwise releases or enters into any exchange transaction) any Permitted Investment concerned with that Account to the extent that the same is, in the opinion of the Intercreditor Agent, necessary for the payment of any amount due under the Senior Finance Documents which could not otherwise be paid out of the cash balance standing to the credit of the relevant Account.

2.6 Information

Commencing with the quarter in which a Permitted Investment is first made on behalf of the Company or any other Obligor, the Company shall, together with any other statement to be provided under this Schedule, ensure the delivery to the Security Agent of a schedule of the investments made, realised or liquidated during the quarter in respect of each Account, in such detail as the Intercreditor Agent may reasonably require.

2.7 No Responsibility

No Senior Secured Party will be responsible for any loss, cost or expense suffered by any Obligor in respect of any of its actions or those of any Account Bank in relation to the acquisition, disposal, deposit or delivery of Permitted Investments pursuant to this Agreement save for any such loss, cost or expense directly caused by its gross negligence or willful misconduct. The Account Banks shall be acting solely for and on behalf of the Company (or the relevant other Obligor) in acquiring, holding or disposing of any Permitted Investment.

3. General Account Provisions

3.1 Transfers/Withdrawals

Save as otherwise agreed in writing with the Intercreditor Agent, the Company shall ensure that where this Schedule expressly provides for the making of payments to, or withdrawals or transfers from any Account, no other payments to, or, as the case may be, other withdrawals or transfers from, such Account shall be made except as expressly permitted under this Schedule or under the Security Documents.

3.2 Application of Amounts

The Company shall ensure that all amounts withdrawn or transferred from any Account for application in or towards making a specific payment or meeting a specific liability shall be applied in or towards making that payment or meeting that liability, and for no other purpose.

3.3 Default

3.3.1 Notwithstanding any other provisions of this Schedule, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to give notice to any Account Bank and the relevant member of the Restricted Group in whose name the Account has been opened instructing the Account Bank not to act on the instructions or requests of that member of the Restricted Group in relation to any sums at any such time standing to the credit of any of the Accounts and the Company and that member of the Restricted Group shall procure that the Account Bank shall, in accordance with the Charges over Accounts and the Account Bank Notices and Acknowledgements, not so act and the Company or, as the case may be, any other member of the Restricted Group shall not be entitled (and the Company shall ensure such other member of the Restricted Group is not entitled) to give or make any further such instructions or requests.

3.3.2 Notwithstanding the other provisions of this Agreement, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to:

- (i) give written notice to any Account Bank (with a copy to the relevant member of the Restricted Group in whose name the Account has been opened) that the Security Agent shall be the sole signatory in relation to the Accounts;
- (ii) apply the credit balances in the Accounts in or towards repayment of the Facilities and such other liabilities of the Obligors as the Intercreditor Agent may elect; and
- (iii) generally use amounts standing to the credit of the Accounts at its discretion in order to discharge the Obligors' obligations under the Transaction Documents.

and, pursuant to the Charges over Accounts and the Account Bank Notices and Acknowledgements, the Company and the relevant member of the Restricted Group in whose name the Account has been opened shall procure that the Account Bank so acts and makes such payments accordingly.

3.4 Review of Accounts

The Company and each other member of the Restricted Group irrevocably grants (solely for the purposes of its role as agent of the Senior Secured Creditors hereunder) (and the Company shall ensure each such other member of the Restricted Group shall so grant) the Security Agent or any of its appointed representatives access to review the books and records of the Accounts (and shall irrevocably authorise (and the Company shall ensure each other member of the Restricted Group authorises) each Account Bank to disclose the same to the Security Agent and its appointed representatives) and irrevocably waives (and the Company shall ensure each other member of the Restricted Group so waives) any right of confidentiality which may exist in respect of such books and records solely

to the extent necessary to allow disclosure of such books and records to any Senior Secured Creditor and its advisers *provided* that, to the extent any such right of confidentiality does exist and the information comprised in such books and records is not otherwise in the public domain or required to be notified by the Company or any other member of the Restricted Group or the Account Bank to any of the Senior Secured Creditors and subject to any requirement to disclose any such information pursuant to any Legal Requirement or any other regulatory or stock exchange requirement, any Senior Secured Creditor or adviser to whom such disclosure is made shall undertake to the Company to keep the information comprised therein confidential.

### 3.5 Statements

The Company and each other member of the Restricted Group shall arrange (and the Company shall ensure each such member of the Restricted Group so arranges) for each Account Bank to provide to the Security Agent, at the latter's request:

- (a) a list of all Accounts maintained with it;
- (b) upon the reasonable request of the Security Agent, in respect of each calendar month, a statement of the balance of and each payment into and from each of the Accounts and the global amount of interest earned on each such Account during the preceding three month period or, if less, since the opening of the relevant Account; and
- (c) such other information concerning the Accounts as the Security Agent may require.

### 3.6 Waiver of Rights

#### 3.6.1 Waiver of rights by the Company

Save as provided in this Agreement, the Company and each other member of the Restricted Group agrees not to (and the Company shall ensure each other member of Restricted Group does not) exercise any right which it (or such other member of the Restricted Group) may have under any applicable law to direct the transfer of any amount standing to the credit of an Account to the Company or any other member of the Restricted Group or its order or to direct the transfer of any Permitted Investment to the Company or any other member of the Restricted Group or to its order.

#### 3.6.2 Waiver of rights by Account Banks

The Company and each other member of the Restricted Group shall procure (and the Company shall ensure each such other member of the Restricted Group procures) that each Account Bank acknowledges and agrees that each Account and Permitted Investment is the subject of a Lien in favour of the Senior Secured Creditors collectively and acknowledges and agrees that (save, in the case of the Performance Bond Provider, as permitted pursuant to (i) section 2.6 of the Performance Bond Facility Agreement prior to the issuance of an Enforcement Notice) it is not entitled to, and shall undertake not to, claim or exercise any lien, right of set-off, combination of accounts or other right, remedy or security with respect to:

- (a) moneys standing to the credit of such Account or in the course of being credited to it or any earnings; or

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(b) any Permitted Investment.

7 Closing of Accounts

The Company and each other member of the Restricted Group may close any Account and instruct each Account Bank to transfer any credit balances on any Account maintained with it *provided that* all balances standing to the credit of any such Account are transferred before the closure of such Account to another account or combination of accounts *provided that* each such account satisfies the requirements of the definition of "Account" in Clause 1.1.

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## SCHEDULE 7

### INSURANCE

References in this Schedule 7 to Clauses and Appendices refer to the Clauses and Appendices of this Schedule 7, unless the context otherwise requires.

#### 1. INSURANCES TO BE EFFECTED

##### 1.1 Direct Insurances

The Company shall effect:

- 1.1.1 the Construction Period Insurances as set out in Appendix 1 (*Construction Period Insurances*) on or before the issuance of the full Notice to Proceed (as defined in the Construction Contract) and shall maintain such Direct Insurances (including such additional Direct Insurances as may be required pursuant to paragraphs 1.2 and 4 of Appendix 1 (*Construction Period Insurances*)) from the issuance of such notice until the Diamond Opening Date has been achieved (or such later date as may be specified in Appendix 1 (*Construction Period Insurances*));
- 1.1.2 the Operation Period Insurances as set out in Appendix 2 (*Operation Period Insurances*) and the Company shall maintain such Direct Insurances until the Release Date; and
- 1.1.3 all other Direct Insurances that may be required to be effected by the Company from time to time by any applicable law or under any contract to which it is a party and shall maintain such Direct Insurances until the Release Date, in each case, in a form reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser).

##### 1.2 Reinsurance

The Company shall, if required under Clause 2.1.1 (*Policies*), procure that facultative reinsurance of each Direct Insurance is purchased and maintained in full force and effect throughout the period that such Direct Insurance is required by this Schedule 7 to be maintained.

##### 1.3 Additional Insurances

- 1.3.1 The Intercreditor Agent may at any time, having consulted with the Insurance Adviser and acting reasonably and taking into account the availability in the international market place of the following relevant item on reasonable commercial terms, require the Company to:
  - (a) procure the amendment of any or all Insurances to cover increased risks and/or liabilities; and/or

- (b) effect additional Insurances to cover risks and/or liabilities other than those specified in the scope of the Construction Period Insurances, the Operation Period Insurances and the other Direct Insurances as would from time to time be insured in accordance with standard industry practice by a luxury resort and casino owner and operator in Macau carrying on the Permitted Businesses which does not self-insure (except in respect of deductibles required by insurers generally) and which is financed on a limited recourse basis.

in such amounts and, in the case of additional Insurances, with such deductibles, in each case as the Intercreditor Agent may reasonably require, taking into account, among other things, the basis on which the Projects are financed and the interests of the Senior Secured Creditors under the Senior Finance Documents.

- 1.3.2 In the event that the Company fails to effect any Insurance required to be effected pursuant to Clause 1.3.1 above, the Intercreditor Agent may effect such Insurance and the Company shall indemnify the Intercreditor Agent for the direct costs and expenses incurred by it as a result of effecting such Insurance.
- 1.3.3 The Company may effect additional Insurances other than those required by Clause 1.1 (*Direct Insurances*), Clause 1.2 (*Reinsurance*) or the other sub-clauses of this Clause 1.3 *provided* that such Insurances do not prejudice the interests of the Company or the Senior Secured Creditors under or in respect of any Insurance effected pursuant to such clauses.

## 2. INSURANCE UNDERTAKINGS

### 2.1 Policies

The Company shall procure that:

- 2.1.1 each of the Direct Insurances is placed and maintained with one or more insurers authorised to operate in the Macau SAR. The coverage provided by such Direct Insurance shall be provided by insurers rated at least A- by Standard & Poor's Corporation or at least A by AM Best. Where this is not complied with the Company shall procure that the Direct Insurance is reinsured (minimum 95% of 100%) by insurers rated at least A- by Standard & Poor's Corporation or at least A by AM Best for their long term unsecured and unsubordinated debt or, in each case, in respect of:
- (a) the Professional Indemnity Insurance referred to in paragraph 3 of Appendix 1 (*Construction Period Insurances*), rated at least BBB + by Standard & Poor's Corporation or B by AM Best; and
- (b) the Workers Compensation Insurance referred to in paragraph 4 of Appendix 1 (*Construction Period Insurances*), rated at least BBB by Standard & Poor's Corporation or B- by AM Best);
- 2.1.2 each of the Insurances is in a form and on terms acceptable to the Intercreditor Agent (including, without limitation, the level or period of any deductibles) consistent with the obligations of the Company under this Schedule 7;

- 2.1.3 each Construction Period Insurance and each Operation Period Insurance has endorsements in substantially the form set out in Part A of Appendix 3 (*Form of Endorsements for Direct Insurances*) (or, in the case of the Professional Indemnity Insurance referred to in paragraph 3 of Appendix 1 (*Construction Period Insurances*), the form set out in Part B of Appendix 3 (*Form of Endorsements for Direct Insurances*)) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing; and
- 2.1.4 each Reinsurance of each Construction Period Insurance and Operation Period Insurance has endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing.

## 2.2 General Undertakings

The Company shall:

- 2.2.1 pay or procure the payment of all premiums payable under each of the Insurances promptly as required under the Insurances and if requested by the Intercreditor Agent, promptly produce to the Intercreditor Agent copies of receipts or other evidence of payment satisfactory to the Intercreditor Agent;
- 2.2.2 indemnify the Intercreditor Agent and any Senior Secured Creditor against any premium or premiums paid by that Senior Secured Creditor for any of the Insurances;
- 2.2.3 promptly on receipt by the Company, deliver an original cover note and an original policy for each of the Insurances to the Intercreditor Agent;
- 2.2.4 at least fifteen days prior to the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or the expiry of the Construction Period Insurances, provide evidence reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser) that the Operation Period Insurances shall be in effect on and from the expiry of the Construction Period Insurances;
- 2.2.5 at least ten days prior to the expiry of any Insurance (and provided such Insurance is being renewed), provide to the Intercreditor Agent a certificate from the Company's insurance brokers (or, if the Company has no broker, Insurers) confirming the renewal of the policy relating to such Insurance, the renewal period, the amounts insured and any changes in terms or conditions;
- 2.2.6 take all action within its power to procure that nothing is at any time done or suffered to be done whereby any Insurance may be rendered void or voidable or may be suspended, impaired or defeated or any claim becomes uncollectable in full or in part, including, without limitation:
- (a) complying with all of the requirements imposed on it under the Insurances;

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- (b) taking all action within its power to procure that at all times all parties to the Insurances (other than the Company and the Senior Secured Creditors) comply with all of the requirements under the Insurances; and
  - (c) taking all action necessary to maintain the Insurances as valid and up-to-date insurances;
- 2.2.7 not make any misrepresentation of any material facts or fail to disclose any material facts in respect of the Insurances which may have an adverse impact on the Insurances;
  - 2.2.8 comply with each Direct Insurer's, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer's risk management requirements set out in the policy documents for each Insurance;
  - 2.2.9 promptly make and diligently pursue claims under the Insurances;
  - 2.2.10 notify the Intercreditor Agent promptly upon becoming aware of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) and of any occurrence which the Company considers could reasonably be expected to entitle it to submit a claim under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 or its equivalent in other currencies;
  - 2.2.11 in the event of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) (not taking into account any relevant deductible for this purpose), provide a report to the Intercreditor Agent (and, if possible, procure a report from the Company's insurance broker to the Intercreditor Agent) which shall include a description of the loss;
  - 2.2.12 notify the Intercreditor Agent immediately upon receipt of any proceeds in relation to any claims in excess of USD500,000 under the Direct Insurances;
  - 2.2.13 ensure so far as reasonably possible that no Insurance can be terminated by the Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer for any reason (including failure to pay the premium or any other amount) unless the Intercreditor Agent and the Company receive at least thirty days' written notice (or such lesser period, if any, as may be specified from time to time by Direct Insurers, and, where reinsurance is placed by the Company's insurance brokers, Reinsurers in the case of war risks and kindred perils);
  - 2.2.14 without prejudice to sub-clause 2.2.13 above, notify the Intercreditor Agent if any Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer cancels or gives notice of cancellation of any of the Insurances promptly on receipt of such notice;

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- 2.2.15 notify the Intercreditor Agent of any act or omission or of any event which would reasonably be foreseen as invalidating or rendering unenforceable in whole or in part any of the Insurances;
  - 2.2.16 notify the Intercreditor Agent promptly on becoming aware of any written proposal to make any material variation to any terms of any of the Insurances by any party to it;
  - 2.2.17 not rescind, terminate or cancel any of the Insurances (unless replaced by a policy with the same coverage and otherwise meeting the requirements of this Schedule 7) nor agree to any variation to any of the material terms of the Insurances unless it obtains the prior written agreement of the Intercreditor Agent, which permission shall not be unreasonably withheld;
  - 2.2.18 give the Intercreditor Agent and the Insurance Adviser such information about the Insurances (or as to any matter relevant to the Insurances) as the Intercreditor Agent reasonably requests, from time to time; and
  - 2.2.19 procure the delivery to the Intercreditor Agent by each of the insurance brokers (acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser)) through whom (if any) at any time any of the (i) Direct Insurances are effected of an Insurance Broker's Letter of Undertaking and (ii) Reinsurances are effected of a Reinsurance Broker's Letter of Undertaking.

### 2.3 Assignment of Insurances

- 2.3.1 The Company shall, in accordance with the Assignment of Insurances, grant assignments in favour of the Security Agent on behalf of the Secured Parties over all of its rights, title and interest in the Direct Insurances (other than any public liability, third party liability, workers compensation or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company) held by it from time to time.
- 2.3.2 The Company shall give notice to each of the Direct Insurers (other than with respect to any public liability, third party liability, workers compensation, legal liability or any other insurances the proceeds of which are payable to employees of the Company) who are Macau Direct Insurers (as defined in the Assignment of Insurances) in the form of the Form of Notice of Assignment of Onshore Insurance Policy set out in the schedule to the Assignment of Insurances and shall procure an acknowledgement from each such Direct Insurer in the form of the Form of Acknowledgement from Macau Direct Insurer set out in the schedule to the Assignment of Insurances or such other form reasonably acceptable to the Security Agent.

**2.4 Assignment of Reinsurances**

- 2.4.1 The Company shall procure that each of the Direct Insurers grants an assignment in favour of the Security Agent on behalf of the Secured Parties, over all of its rights, title and interest in any Reinsurance held from time to time under Clause 1.2 (*Reinsurance*) and/or the Reinsurance proceeds (other than relating to any public liability, third party liability or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company). Each assignment shall at all times be in the form of the Assignment of Reinsurances dated on or about the date of this Agreement unless otherwise agreed by the Security Agent (acting on the instructions of the Intercreditor Agent).
- 2.4.2 The Company shall procure that each such Direct Insurer gives notice to each Reinsurer with whom it has effected such Reinsurance in the form set out in Part 1 of Schedule 2 to the Assignment of Reinsurances and shall procure an acknowledgement from each such Reinsurer in the form set out in Part 2 of Schedule 2 to the Assignment of Reinsurances or such other form reasonably acceptable to the Security Agent.

**3. FAILURE TO COMPLY WITH PROVISIONS OF INSURANCES**

**3.1 Notice of Non-Compliance**

The Company shall notify the Intercreditor Agent as promptly as practicable if the Company has at any time failed to comply with this Schedule 7, explaining in reasonable detail the failure, whether the Company reasonably believes it can be remedied and, if so, how and by when.

**3.2 Annual Compliance Certificate**

The Company shall, at the same time as delivery of its annual audited accounts pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) to the Common Terms Agreement but, in any event, not less frequently than once every 12 months after the Signing Date, deliver to the Intercreditor Agent a certificate confirming its compliance with this Schedule 7 or, if there is any non-compliance with this Schedule 7, explaining, in reasonable detail, the non-compliance, whether the Company reasonably believes it can be remedied and, if so, how and by when.

**3.3 Action by Intercreditor Agent**

If at any time and for any reason any Insurance required hereunder is not in full force and effect or if the Company fails to comply with any other provision of this Schedule 7, then, without prejudice to the rights of any of the Senior Secured Creditors under any Senior Finance Document, the Intercreditor Agent may (after consultation with the Insurance Adviser) thereupon on behalf of itself and the other Senior Secured Creditors, or at any time while the same is continuing, procure on behalf of itself and the other Senior Secured Creditors that Insurance at the Company's expense is maintained such that full compliance with this Schedule 7 is restored. If that Insurance cannot be procured by the Intercreditor Agent, the Company shall (without prejudice to any other obligations of the Company under this Schedule 7 or any of the Senior Finance Documents) take or procure the taking of all reasonable steps to eliminate or minimise uninsured hazards as required by the Intercreditor Agent in writing (after consultation with the Insurance Adviser).

3.4 **Continuing Obligations**

Any notification by the Company of its failure to comply with this Schedule 7 shall not prejudice the rights of the Senior Secured Creditors under the Senior Finance Documents.

4. **MARKET AVAILABILITY**

Notwithstanding the foregoing provisions of this Schedule 7, the Company shall not be in breach of its obligations under this Schedule 7 if any Operation Period Insurances (other than insurances which the Company is required to maintain under applicable Legal Requirements) required to be entered into or maintained by the Company in the terms required under this Schedule 7 are not available to the Company or, as the case may be, the Prime Contractor in the international insurance market place on reasonable commercial terms. Without prejudice to any other terms that may be commercially reasonable, for the purposes of this paragraph 4, such commercial terms shall be reasonable if the premium payable in respect of the sum required to be insured under such Operation Period Insurance pursuant to Appendix 2 to this Schedule 7 (or, where no such sum is referred to, the limit of indemnity or limit of liability specified therein) is not more than 125% of the amount derived by multiplying the rate set out opposite such Insurance in Appendix 7 (*Operation Period Insurance Costs*) by such sum or in respect of all Operation Period Insurances (including such Operation Period Insurance) is not more than 125% of the total of such amounts derived for each Operation Period Insurance.

5. **INSURANCE PROCEEDS**

5.1 **Conduct of Claims - Company**

Subject to Clause 5.3 (*Conduct of Claims - Default*) below, the Company has the sole conduct of all claims under the Insurances arising from any one loss (for which purpose, two or more claims made in respect of the same, or reasonably related, circumstances are taken to relate to one loss) where the actual or estimated totality of that loss is less than or equal to USD5,000,000 (or its equivalent in other currencies). For any loss where the actual or estimated totality of claims arising is more than USD5,000,000 (or its equivalent in other currencies), the Company shall not negotiate, compromise or settle any claim without the prior consent of the Intercreditor Agent (after consultation with the Insurance Adviser) (not to be unreasonably withheld).

5.2 **Application of Proceeds**

The Company shall ensure that:

5.2.1 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to physical damage or loss:

- (a) to the extent not required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards the repair or restoration of the damaged Project Facilities in accordance with Schedule 6 (*Accounts*); or

(b) to the extent required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards mandatory prepayment in accordance with Clause 8.3 (*Mandatory Prepayment*);

5.2.2 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to loss of revenue or business interruption shall be applied in accordance with Schedule 9 (*Mandatory Prepayment*);

5.2.3 subject to sub-clause 5.2.4 below and following the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance shall be applied as directed by the Security Agent; and

5.2.4 all proceeds of any public liability, third party liability, workers compensation or legal liability insurance, or directors and officers insurance or any other insurances the proceeds of which are payable to employees of the Company, shall be applied to its intended purpose.

**5.3 Conduct of Claims - Default**

Notwithstanding any other provisions of this Clause 5, if an Enforcement Notice has been delivered, then the Security Agent in consultation with the Insurance Adviser shall have sole conduct of all claims under the Insurances.

**5.4 Insolvency of Direct Insurers**

For the purpose of conduct of claims and application of proceeds under any Reinsurance taken out by a Direct Insurer, references to delivery of an Enforcement Notice in this Clause 5 shall include delivery of the notice referred to in Clause 2.2.1 (*Enforcement of Assignment*) of the Assignment of Reinsurances to such Direct Insurer following an "Insolvency Event" (as defined in the Assignment of Reinsurances).

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APPENDIX 1

INSURANCES

CONSTRUCTION PERIOD INSURANCES

**I. Construction All Risks Insurance**

**1.1 Insured**

The Company and the following Co-Insureds:

- (1) the Prime Contractor and/or all other Contractors and Subcontractors of any tier and/or suppliers and/or others engaged to provide goods and services in connection with the Projects;
- (2) in respect of activities on or about the Site only, architects, surveyors, engineers and other professional consultants (including the Advisers); and
- (3) the Secured Parties,

each for their respective rights and interests.

**1.2 Insured Property**

The permanent and temporary works, equipment, services, materials, plant (other than constructional plant, tools and equipment belonging to or the responsibility of the Contractors or Subcontractors of any tier), machinery, stocks, spares, temporary buildings (if any) and all other property used or for use in connection with the Projects which the Company owns or for which it is responsible (excluding such other property comprising operation period furniture, fittings and equipment in respect of which separate Insurances, on substantially the same terms as the Construction All Risks Insurance required hereunder and/or otherwise reasonably acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser), have been placed prior to the Company acquiring ownership thereof or being responsible therefor).

**1.3 Coverage**

All risks of physical loss or damage which are normally insurable.

**1.4 Sum Insured**

An amount equivalent to the full reinstatement or replacement value of the Insured Property plus Removal of Debris plus Professional Fees.

**1.5 Territorial Limits**

Anywhere within Macau SAR.

**1.6 Period of Insurance**

For the full period up to the Diamond Opening Date plus the first 12 months of the Defects Liability Period.

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**1.7 Permitted Exclusions**

To include:

- War, Civil War etc.
- Nuclear Risks
- Wear and Tear
- Unexplained shortage
- Consequential financial losses
- Terrorism
- DE3 type defective design, workmanship and materials exclusion
- Mold

**1.8 Required Extensions and Conditions**

- Professional Fees Clause
- Debris Removal Clause
- 72 Hour Clause
- Free Issue Materials Clause
- Automatic Increase Clause (110 per cent.)
- Extra Charges (20 per cent.)
- Strikes, Riot and Civil Commotion
- Local/Public Authorities and Clause
- Munitions of War Clause
- Extended Maintenance
- Automatic Reinstatement of Sum Insured
- Plans and Documents
- Inland Transit/Offsite Storage and Offsite Fabrication
- Advance Payments Clause
- Marine 50/50 Clause
- General Waiver of Subrogation

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- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
  - Primary Insurance Clause
  - Assignment of Insurance

**1.9 Maximum Deductible**

Not to exceed:

- USD250,000 each and every loss in respect of damage due to Acts of God/Theft/Fire/Maintenance Period/Consequences of Defective Design, Material and Workmanship (DE3)
- 20% of the loss amount each and every loss subject to a minimum deductible of USD100,000 in respect of Water Damage
- USD250,000 each and every loss in respect of Defective Design, Material and Workmanship (DE5)
- 50% of the loss amount each and every loss subject to a minimum of USD35,000 in respect of Scaffolding
- USD35,000 each and every loss for Others

**2. Third Party Liability Insurance**

**2.1 Insured**

The Company and the following Co-insureds:

- (1) the Prime Contractor and/or all other Contractors and Subcontractors of any tier and/or suppliers and/or others engaged to provide goods and services in connection with the Projects;
- (2) in respect of activities on or about the Site only, architects, surveyors, engineers and other professional consultants (including the Advisers); and
- (3) the Secured Parties,

each for their respective rights and interests.

**2.2 Interest**

To indemnify the Insured in respect of all sums that it may become legally liable to pay consequent upon death, personal injury and disease to persons, loss or damage to property, obstruction, loss of amenities, stoppage of traffic happening or arising out of or in connection with the Projects.

**2.3 Limit of Indemnity**

Not less than USD50,000,000 in respect of any one occurrence, the number of occurrences being unlimited.

**2.4 Territorial Limits/Jurisdiction**

Worldwide.

**2.5 Period of Insurance**

As per the Construction All Risks Insurance.

**2.6 Permitted Exclusions**

To include:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability for loss or damage to property which is reasonably foreseeable as being inevitable having regard for the nature of work undertaken
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property in the care, custody and control of the Insured or to the permanent or temporary works
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War, civil war etc.
- Nuclear risks
- Terrorism

**2.7 Required Extensions and Conditions**

- Cross Liability Clause
- Contractual Liability
- Underground Services
- Vibration Removal or Weakening of Support

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- Munitions of War Clause
  - General Waiver of Subrogation
  - Costs and Expenses in addition to the Limit of Indemnity (other than North America)
  - Worldwide jurisdiction
  - Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
  - Primary Insurance Clause

## 2.8 Maximum Excess

Not to exceed:

- 20% of the loss amount each and every loss subject to a maximum of USD200,000 and minimum of USD10,000 in respect of claims on Vibration, Removal and Weakening of Support
- 10% of the loss amount each and every loss subject to a maximum of USD100,000 and minimum of USD10,000 in respect of Underground Services/Water Damage
- 40% of the loss amount each and every loss subject to a maximum of USD100,000 and minimum of USD10,000 in respect of Oil Filled Cables and Fibre Optic Cables
- US\$200,000 each and every occurrence in respect of damage to property owned by or in the care custody and control of the Company
- USD25,000 each and every occurrence in respect of Third Party Property Damage and Interference with right of way/property/enjoyment of use by obstruction, trespass, loss of amenities or nuisance

## 3. Professional Indemnity Insurance (Prime Contractor)

### 3.1 Insured

The Prime Contractor.

### 3.2 Interest

To indemnify the Insured in respect of their legal liability for claims made against them during the period of insurance for any negligent act, error or omission in the conduct and execution of their professional activities and duties.

### 3.3 Limit of Indemnity

USD20,000,000 in respect of any one claim and in the aggregate during the period of insurance.

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3.4 **Territorial Limits**

Macau SAR.

3.5 **Period of Insurance**

To be effected and maintained on an annually renewable basis for the period commencing no later than the date of this Agreement until 6 years from the later of the Expansion Opening Date and the Diamond Opening Date.

3.6 **Excess**

Not to exceed USD2,500,000 in respect of each occurrence or such higher amount as may be agreed by the Intercreditor Agent.

4. **Compulsory Insurance**

Insurances required to comply with all statutory requirements including Workers Compensation and Motor Liability Insurances. The Compulsory Insurance effected by the Company shall contain an indemnity clause in favour of the Senior Secured Creditors.

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APPENDIX 2

OPERATION PERIOD INSURANCES

1. **Property All Risks Insurance**

1.1 **Insured**

The Company and the following Co-insureds:

(1) The Secured Parties,

each for their respective rights and interests.

1.2 **Insured Property**

Property and interests of every description used for or in connection with the ownership and/or maintenance and operation of the facilities unless more specifically insured under the Construction All Risks Insurance (Item 1 of Appendix I) – this shall include mechanical and electrical equipment if applicable.

1.3 **Coverage**

All risks of physical loss or damage which are normally insurable.

1.4 **Sum Insured**

A first loss limit of US\$850,000,000 any one occurrence or any other first loss limit to be agreed by the Intercreditor Agent after review of the estimated maximum loss calculation

1.5 **Territorial Limits**

Anywhere in the Macau SAR.

1.6 **Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

1.7 **Permitted Exclusions**

To include:

- War, civil war etc.
- Nuclear Risks
- Wear, tear and general deterioration
- Unexplained shortages

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- Terrorism
  - Consequential financial losses
  - Any part of the Insured Property which is, in itself defective in design, workmanship and materials but this exclusion shall not apply to other parts of the Insured Property damaged in consequence of such a defect.

**1.8 Required Extensions and Conditions**

- 72 hour clause
- Temporary removal
- Munitions of War Clause
- Strikes, Riot and Civil Commotion
- Minimisation of Loss
- Advance Payment Clause
- Temporary Repairs
- Automatic Reinstatement of Sum Insured
- Including pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded
- Contract works including works and temporary works erected or in the course of erection including materials and other things for incorporation in the Project Works up to a sum of USD1,000,000
- Capital Additions
- Debris Removal
- Professional Fees
- Local/Public Authorities Clause
- Mechanical or electrical breakdown of the Insured Property
- Replacement of computer records
- General Waiver of Subrogation (to include Expansion construction participants)
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause
- Assignment of Insurance

**1.9 Maximum Deductible**

Not to exceed USD500,000 in respect of each occurrence or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available on commercially reasonable terms.

**2. Business Interruption Insurance**

**2.1 Insured**

The Company and the following Co-insureds:

(1) the Secured Parties;

each for their respective rights and interests.

**2.2 Interest**

To indemnify the Insured for fixed costs following loss or damage which is indemnifiable or would be indemnifiable but for the application of the excess under the Property All Risks Insurance.

**2.3 Sum Insured**

A sum sufficient to cover the sums the subject of the Indemnity for the Indemnity Period.

**2.4 Indemnity Period**

The period commencing from the date of the loss or damage and ending when the results of the insured business cease to be affected in consequence of the loss or damage. Not exceeding the Indemnity Period Limit.

The Indemnity Period Limit shall not be less than 12 months.

**2.5 Territorial Limits**

As for the Property All Risks Insurance.

**2.6 Period of Insurance**

As for the Property All Risks Insurance.

**2.7 Permitted Exclusions**

As for the Property All Risks Insurance.

**2.8 Required Extensions**

- Suppliers Extension
- Prevention of Access
- Public Utilities
- Payments on Account

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- Automatic Reinstatement of Sum Insured
  - Professional Accountants Clause
  - General Waiver of Subrogation (including the Trusts and to include Expansion construction participants)
  - Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (loss payee and notices)
  - Primary Insurance Clause
  - Assignment of Insurance
  - Interruption or interference arising out of an event insured under the Defects Liability Period covers for the Original Project and the Expansion under the Construction All Risks Insurance

**2.9 Maximum Excess**

Not to exceed 30 days in the aggregate for each and every loss.

**3. Third Party and Products Liability Insurance**

**3.1 Insured**

The Company and the following Co-insureds:

(1) The Secured Parties,

each for their respective rights and interests.

**3.2 Interest**

To indemnify the Insured in respect of all sums that it may become legally liable to pay consequent upon death, personal injury and disease to persons, loss or damage to property, obstruction, loss of amenities, stoppage of traffic happening or arising from or in connection with the operation and maintenance of the Projects and the services to be provided thereby.

**3.3 Limit of Indemnity**

Not less than USD50,000,000 in respect of any one occurrence, the number of occurrences being unlimited but in the aggregate in respect of sudden and accidental pollution and products liability.

**3.4 Territorial Limits/Jurisdiction**

Worldwide excluding USA and Canada in respect of Territorial Limit

Worldwide in respect of Jurisdiction

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### 3.5 Period of Insurance

As for Wynn Resorts Umbrella and Excess Liability Insurances until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company)

### 3.6 Permitted Exclusions

To include:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability for loss or damage to property which is reasonably foreseeable as being inevitable having regard for the nature of work undertaken
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion not to apply to employees' or visitors' property including vehicles and their contents
- Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War, civil war etc.
- Nuclear risks

### 3.7 Required Extension and Conditions

- Cross Liability Clause
- Contractual Liability
- Costs and Expenses in addition to the Limit of Indemnity (other than North America)
- Advertising Liability (relating to physical damage from billboards, signs, etc.)
- General Waiver of Subrogation
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (loss payee and notices)
- Primary Insurance Clause

- 
- Assignment of Insurance

**8 Maximum Excess**

Not to exceed USD100,000 each occurrence or such higher amount as may be agreed by the Intercreditor Agent.

**4. Terrorism Insurance (Including Business Interruption)**

**4.1 Insured**

To follow the terms and conditions of the Property All Risks Insurance (1) and Business Interruption Insurance (2), with the following exceptions:

Maximum Deductible - Not to exceed USD1,000,000 (or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available at commercially reasonable terms) each and every loss for Property Damage and 60 days for Business Interruption.

Maximum Sum Insured - USD400,000,000.

**5. Fidelity Guarantee/Crime Insurance**

**5.1 Insured**

The Company and the Secured Parties  
each for their respective rights and interests.

**5.2 Coverage**

Direct pecuniary loss of money, negotiable instruments or goods caused by acts of fraud or dishonesty by any employee or any other person.

**5.3 Limits of Liability**

Not less than USD25,000,000 in respect of any one occurrence or such higher amount as may be required to fully cover the amount of money on site at any one time.

**5.4 Territorial Limits**

Worldwide

**5.5 Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

**5.6 Maximum Deductible**

Not to exceed USD150,000 in respect of each occurrence or such higher amounts as may be agreed by the Intercreditor Agent.

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**6. Money Insurance**

**6.1 Insured**

The Company and the Secured Parties

each for their respective rights and interests.

**6.2 Coverage**

Loss, destruction or damage of money in transit, money at the business premises of the Insured during office hours and money in locked safe/drawer in the business premises of the Insured after office hours.

**6.3 Limits of Liability**

Not less than USD30,000,000 in respect of any one occurrence or such higher amount as may be required to fully cover the amount of money on site at any one time.

**6.4 Territorial Limits**

Worldwide

**6.5 Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

**6.6 Maximum Deductible**

Not to exceed USD50,000 in respect of each occurrence or such higher amounts as may be agreed by the Intercreditor Agent.

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APPENDIX 3

FORM OF ENDORSEMENTS FOR DIRECT INSURANCES

PART A

INSURED PARTIES [ ] (the "Insureds")  
[POLICY/COVER NOTE] REFERENCE NUMBER: [ ] (together with these endorsements, the "Policy")  
EFFECTIVE DATE: [ ]

It is understood and agreed between the Insurer and the Insureds that, notwithstanding any other provision of this Policy, the following endorsement shall apply:

Section I: Definitions

1. In this endorsement:

"Common Terms Agreement" means the agreement dated 14 September 2004 between, amongst others, the Company, the Intercreditor Agent and the Security Agent as amended, consolidated, supplemented, novated or replaced from time to time;

"Company" means Wynn Resorts (Macau) S.A.;

"Intercreditor Agent" means Société Générale Asia Limited in its capacity as Intercreditor Agent for the Senior Secured Creditors and includes its successors in that capacity;

"Insured" means those parties so described in the Policy Schedule;

"Insurers" means the insurer or insurers underwriting this insurance policy;

"Projects" has the meaning given to it in the Common Terms Agreement;

"Secured Parties" has the meaning referred to in the Common Terms Agreement;

"Security Agent" means Société Générale Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties and includes its successors in that capacity;

"Senior Secured Creditors" has the meaning given in the Common Terms Agreement.

Section II: Policy formation / basis

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. Interest of the Secured Parties

The Insurers acknowledge that the Secured Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. Liability for premium

Neither the Intercreditor Agent, the Security Agent nor the Secured Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Company from its obligations to pay any premium under this Policy.

5. Disclosure

5.1 The Insurers acknowledge to the Secured Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Company in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by the Insurers in respect of their decision to co-insure the Secured Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Party. The acknowledgements provided by the Insurers in this clause 5.1 shall have no effect on any rights that the Insurers might have had under or in relation to the Policy against any party (including the Company) other than the Secured Parties in the absence of such acknowledgements.

5.2 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

**Section III: Rights to avoid / cancel or change Policy terms**

6. Non-vitiation

6.1 Paragraph (i) It is noted and agreed that if the insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this multiple insured's clause) cover hereunder shall apply in the same manner and to the same extent as if the individual policies had been issued to each such insured party provided that the total liability of the insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including and inder limits set by memorandum or endorsement stated in the policy.

6.2 Paragraph (ii) It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

- 6.3 Paragraph (iii) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- 6.4 Paragraph (iv) It is further understood and agreed that insurers shall be entitled to avoid liability to or (as maybe appropriate) claim damages from any of the insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this policy each referred to in this clause as a vitiating act.
- 6.5 Paragraph (v) It is however agreed that (save as provided in this multiple insured's clause) a vitiating act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a vitiating act.
- 6.6 Paragraph (vi) Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence of or otherwise following a vitiating act in which circumstances insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as insured.

7. Cancellation

- 7.1 The Insurers agree that they shall not seek to cancel or suspend this insurance except: (i) for non payment of premium; or (ii) where an insured party consistently fails to comply with Insurers' requirements relating to survey or loss control action points.
- 7.2 The Insurers shall promptly notify the Intercreditor Agent in writing:
- (a) in the event of any suspension, cancellation or termination of this Policy by the Insurers or the Insured; and
  - (b) of any act or omission or any event of which any Insurer has knowledge and which might invalidate or render unenforceable, in whole or in part, the Policy.

The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or non-renewal is given to the Intercreditor Agent. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

- 7.3 The Insurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Insurers shall give the Intercreditor Agent at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect and shall promptly notify the Intercreditor Agent of any fact, change of circumstance or occurrence of which any Insurer is aware which is material to the risks insured against

under the Policy or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Company, the Insurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

Notice of claim by the Secured Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claim Payments / Loss Payee

Payments made in accordance with this clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Company or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid into such account as the Security Agent as loss payee may specify in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to such account as the Security Agent directs in writing.

Any return premiums shall be paid to such account as the Security Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to such account as the Security Agent directs in writing.

11.4 Set-off

The Insurers may, at their discretion, deduct overdue, unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by Company under or in relation to the Policy.

12. Waiver of subrogation

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out);

13. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Projects;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
  - (i) any other policy specifically effected for the construction or operational phase(s) of the Projects; or
  - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Projects; or a related business interruption insurance policy.

**Section V: Miscellaneous**

**14. Notice of Security Interest**

14.1 The Insurers acknowledge that by an assignment contained in the Assignment of Insurances between the Company and the Security Agent dated [ ] (as amended, consolidated, supplemented, novated or replaced from time to time) (the "Assignment"), the Company assigned by way of security to the Secured Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in the Company's interest in this insurance.

14.2 At the reasonable request of the Intercreditor Agent and at its expense and subject to any legal, contractual or regulatory restrictions, the Insurers shall make those documents contained within their placing and claims files to which the Company would be entitled to have access available to the Intercreditor Agent or the Insurance Adviser and provide copies of such documents to them.

**15. Notice**

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

(i) if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

(ii) if by post, within 2 business days of release from the relevant Insurer's office.

15.2 The address and fax number of the Intercreditor Agent and the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the Intercreditor Agent or the Security Agent for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent and the Security Agent are as follows:

Intercreditor Agent: Société Générale Asia Limited

Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong

Tel: +852 2166 5665/+852 2166 5667

Fax: +852 2804 6215

Attention: Michael Poon/Raymond Fung  
Risk & Agency

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Security Agent: Société Générale, Hong Kong Branch  
Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong  
Tel: +852 2166 5665/+852 2166 5667  
Fax: +852 2804 6215  
Attention: Michael Poon/Kenneth Choi  
Risk & Agency

16. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with English law.  
This endorsement overrides any conflicting provision in this Policy.

**PART B**

At the request of the Insured, it is noted that the Company will give written notice to Société Générale Asia Limited (herein referred to as "the Lender") at its last known address notified to the Company in writing in the following events:

- (a) issuance and/or receipt of cancellation notice pursuant to the cancellation clause of the policy;
- (b) event(s) leading to suspension or termination of this insurance other than natural expiry of this insurance;
- (c) default in payment of premium by the insured; and
- (d) request for reduction in the Limit of Indemnity and/or increase in Excess by the Insured or the Company.

Subject to other terms and conditions of this insurance, the Company agrees not to cancel, suspend or terminate this insurance (other than natural expiry); to reduce the Limit of Indemnity and/or increase the Excess before the expiry of the 30<sup>th</sup> day from the issuance of such notice to the Lender.

APPENDIX 4

FORM OF ENDORSEMENTS FOR REINSURANCES

REINSURANCE [CONTRACT/COVER NOTE] REFERENCE  
NUMBER:  
EFFECTIVE DATE:

[ ] (together with these endorsements, the "Reinsurance  
Contract")  
[ ]

It is understood and agreed between the Reinsurer, the Insurers and the Insureds that, notwithstanding any other provision of this Policy, the following endorsement shall apply:

**Section I: Definitions**

1. In this endorsement:

"Common Terms Agreement" means the agreement dated 14 September 2004 between, amongst others, the Company, the Intercreditor Agent and the Security Agent as amended, consolidated, supplemented, novated or replaced from time to time;

"Company" means Wynn Resorts (Macau) S.A.;

"Intercreditor Agent" means Société Générale Asia Limited in its capacity as Intercreditor Agent for the Senior Secured Creditors and includes its successors in that capacity;

"Insured" means those parties so described in the Original Policy;

"Original Policy" means the direct insurance policy reinsured by this reinsurance contract;

"Projects" has the meaning given to it in the Common Terms Agreement;

"Reinsured" means the Insurer or Insurers of the Original Policy;

"Reinsurers" means the insurer or insurers underwriting this insurance policy;

"Secured Parties" has the meaning referred to in the Common Terms Agreement;

"Security Agent" means Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties and includes its successors in that capacity;

"Senior Secured Creditors" has the meaning given in the Common Terms Agreement.

**Section II: Policy formation / basis**

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate Original Policy covering each Insured. Accordingly, the liability of the Reinsurers under this Policy to any one of the Re-insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of the Original Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. Interest of the Secured Parties

The Reinsurers acknowledge that the Secured Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under the Original Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. Liability for premium

Neither the Intercreditor Agent, the Security Agent nor the Secured Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Reinsured from its obligations to pay any premium under this Policy.

5. Disclosure

5.1 The Reinsurers acknowledge to the Secured Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Reinsured in respect of the risks hereby insured on the assumption that such information is not materially misleading; (ii) there is no information which has been relied on or is required by the Reinsurers in respect of their decision to insure the Secured Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Party. The acknowledgements provided by the Reinsurers in this clause 5.2 shall have no effect on any rights that the Reinsurers might have had under or in relation to the Policy against any party (including the Company) other than the Secured Parties and the Intercreditor Agent in the absence of such acknowledgements.

5.2 The Reinsurers acknowledge that under the Original Policy non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

**Section III: Rights to avoid / cancel or change Policy terms**

6. Non-vitiating

6.1 Paragraph (i) It is noted and agreed that if the insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this multiple insured's clause) cover hereunder shall apply in the same manner and to the same extent as if the individual policies had been issued to each such insured party provided that the total liability of the insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including and inner limits set by memorandum or endorsement stated in the policy.

- 6.2 Paragraph (ii) It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 6.3 Paragraph (iii) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- 6.4 Paragraph (iv) It is further understood and agreed that insurers shall be entitled to avoid liability to or (as maybe appropriate) claim damages from any of the insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this policy each referred to in this clause as a vitiating act.
- 6.5 Paragraph (v) It is however agreed that (save as provided in this multiple insured's clause) a vitiating act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a vitiating act.
- 6.6 Paragraph (vi) Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence of or otherwise following a vitiating act in which circumstances insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as insured.

7. Cancellation

- 7.1 The Reinsurers agree that they shall not seek to cancel or suspend the this insurance except: (i) for non payment of premium; or (ii) where an Insured consistently fails to comply with Reinsurers' requirements relating to survey or loss control action points.
- 7.2 The Reinsurers shall promptly notify the Intercreditor Agent in writing in the event of any suspension, cancellation, termination of this Policy by the Reinsurers or by the Reinsured or Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or non-renewal is given to the Intercreditor Agent. Nothing in this clause shall give the Reinsurers any right to suspend, cancel or terminate this Policy which the Reinsurers do not otherwise have under this Policy.
- 7.3 The Reinsurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Reinsurers shall give the Intercreditor Agent at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Reinsurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Company, the Reinsurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

Notice of claim by the Secured Parties or any other party entitled to indemnity under the Original Policy shall, in the absence of manifest error, be accepted by Reinsurers as a valid notification of claim on behalf of all other Reinsureds and Insureds subject to the full terms of the Policy.

11. Claim Payments / Loss Payee

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Reinsurers' liability to pay the Reinsured or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid to such account as the Security Agent as loss payee may specify in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Reinsured or Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to such account as the Security Agent directs in writing.

Any return premiums shall be paid to such account as the Security Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to such account as the Security Agent directs in writing.

11.4 Set-off

The Reinsurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Reinsured under or in relation to the Policy.

12. Waiver of subrogation

The Reinsurers waive all rights of subrogation howsoever arising which they may have or acquire against any Reinsured or Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Reinsured or Insured except against any:

- (i) such Reinsured or Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)-(c) below (or would be so insured if cover in the terms set out in this Policy had not been taken out);

13. Primary insurance

The Reinsurers agree that the Original Policy provides the primary cover for risks insured under the Original Policy. In the event that any risk insured under the Original Policy is also insured under any other policy of insurance effected by any Reinsured or Insured, the Reinsurers agree to indemnify the Reinsured or Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Projects;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Reinsurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Reinsured or Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
  - (i) any other policy specifically effected for the construction or operational phase(s) of the Projects; or
  - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Projects; or a related business interruption insurance policy.

Section V: Miscellaneous

14. Notice of Security Interest

The Reinsurers acknowledge that by an assignment contained in the Assignment of Reinsurances dated [ ] between the Reinsured and the Security Agent (as amended, consolidated, supplemented, novated or replaced from time to time) (the "Assignment"), Reinsured assigned by way of security to the Secured Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Reinsured or Insured is or may at a future time become entitled. The Reinsurers confirm that they have not been notified of any other assignment of or security interest in the Reinsured's interest in this insurance.

15. Insurer access to Due Diligence Reports

The Senior Secured Creditors shall have no duty of disclosure to the Reinsurers in relation to any Reinsurance. Nevertheless, on the written reasonable request of the Reinsurers, the Senior Secured Creditors shall, subject to the Company obtaining any other consents required for such access (which consents the Company agrees it shall use its reasonable endeavours to obtain), provide the Reinsurers with reasonable access to any relevant due diligence report(s) commissioned by the Senior Secured Creditors relating to the Projects. The Company consents to such access and the Reinsurers shall keep such report(s) confidential and shall accept such information without rights of recourse against any of the Senior Secured Creditors, the Company or the party/parties that prepared the said reports.

16. Notice

16.1 All notices or other communications under or in connection with the Policy will be given via the reinsurance broker by fax and post. Any such notice given will be deemed to be given on the earlier of:

- (a) if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and
- (b) if by post, within 2 business days of release from the relevant Insurer's office.

16.2 The address and fax number of the Intercreditor Agent and the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the Intercreditor Agent or the Security Agent for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent and the Security Agent are as follows:

Intercreditor Agent: Société Générale Asia Limited  
Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong  
Tel: +852 2166 5665/+852 2166 5667  
Fax: +852 2804 6215

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Attention: Michael Poon/Raymond Fung  
Risk & Agency

Security Agent: Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong

Tel: +852 2166 5665/+852 2166 5667

Fax: +852 2804 6215

Attention: Michael Poon /Kenneth Choi  
& Agency

Risk

17. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Policy.

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APPENDIX 5

FORM OF INSURANCE BROKER'S LETTER OF UNDERTAKING

To: [ ] as Intercreditor Agent

[Date]

Dear Sirs,

1. We refer to Schedule 7 (*Insurance*) (the "**Insurance Schedule**") to the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the "**Company**") and the financial institutions referred to therein as Senior Secured Creditors, as amended, consolidated, supplemented, novated or replaced from time to time. Terms used herein shall bear the same meaning as in the Insurance Schedule. Any reference herein to a document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.
2. We, in our capacity as insurance brokers to the Company, confirm that each Direct Insurance as required pursuant to Clause 1.1 of the Insurance Schedule is in full force and effect as of the date of this letter on and in respect of the risks set out in the Direct Insurances evidenced in the policy cover notes attached hereto as Annex A and that all premiums which are required to have been paid at the date hereof in respect of such Direct Insurances have been paid in full.
3. We confirm that each Direct Insurance referred to in paragraph 2 above contains endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) to the Insurance Schedule.
4. Pursuant to instructions received from the Company, we hereby undertake in respect of the Direct Insurances referred to in the attached cover notes:
  - (a) in the case of any such Direct Insurance, as and when the same is renewed, extended or replaced, and subject to market conditions current at the time of application for such renewal, extension or replacement, to use our best efforts to ensure that it complies with the requirements of the Insurance Schedule or such other requirements as you may approve in writing and that it contains endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) to the Insurance Schedule or in such other form as you may approve in writing;
  - (b) to pay to the accounts specified in the relevant loss payable clauses in the relevant policy documents without any set-off or deduction of any kind for any reason any, and all proceeds from or other payments made pursuant to the Direct Insurances (including refunds of premiums) received by us from the insurers except as might otherwise be permitted in the relevant policy endorsement provisions or required by law or court order or as you may otherwise agree in writing;

(c) to advise you:

- (i) as soon as practical upon our becoming aware of any actual or proposed:
  - (A) cancellation or suspension of cover under any Direct Insurance;
  - (B) reduction in limits or coverage or any increase in deductibles; and
  - (C) termination prior to the original expiry date of any Direct Insurance;
- (ii) as soon as practical of any default in the payment of any premium for any of the Direct Insurances;
- (iii) at least 45 days prior to the expiry of any Direct Insurance if we have not received instructions to negotiate the renewal thereof from the Company and/or any jointly insured parties or the agents of any such party and at least 5 Business Days prior to the expiry thereof if such Direct Insurance has not been renewed;
- (iv) if we receive instructions to negotiate the renewal of any Direct Insurance, the details of such instructions and, upon the renewal of such Direct Insurance, the terms of such renewal; and
- (v) of any act or omission of any event of which we have knowledge and which might invalidate or render unenforceable in whole or in part any of the Direct Insurances promptly upon our becoming aware of the same;

(d) to disclose to you any fact, change of circumstance or occurrence material to the risks insured against under the Direct Insurances or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions promptly upon our becoming aware of the same;

(e) to notify you promptly following our becoming aware that we shall cease to act as insurance broker to the Company; and

(f) on your reasonable request and at your expense and subject to any legal, contractual or regulatory restrictions, to make those documents contained within our placing and claims files to which the Company would be entitled to have access available to you or your Insurance Adviser at reasonable times and places, and to provide you with copies of any such documents.

5. The above undertakings are given subject to our continuing appointment as insurance brokers to the Company and in relation to the Direct Insurances and the handling of claims in relation to them.

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6. The contents of this letter may not be disclosed to any other party other than to any person:
- (a) to (or through) whom a Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and/or obligations under the Senior Finance Documents;
  - (b) to (or through) whom a Secured Party enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, any of the Senior Finance Documents or any Obligor; or
  - (c) to whom all or any contents of this letter may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement
- (a "Third Party") and, in the event that it is disclosed to a Third Party, any and all liability howsoever arising to such Third Party is hereby expressly excluded. No person except the Senior Secured Parties has any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
7. Our aggregate liability to you for any and all matters arising from this letter and the contents thereof shall in any and all events be limited to the sum of USD1,000,000 and confined to direct losses in contract. Any and all other liability including, but not limited to, liability in tort and liability for consequential losses is hereby expressly excluded. Notwithstanding the foregoing, nothing in this letter shall serve to limit our liability for death or personal injury caused by our negligence.
8. This letter shall be governed and construed in accordance with the laws of England and any disputes arising in connection with this letter shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall take place in Hong Kong and shall be conducted in English. The arbitration award shall be binding upon both parties.

Yours faithfully,

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[name of insurance broker]

APPENDIX 6

FORM OF REINSURANCE BROKER'S LETTER OF UNDERTAKING

To: [ ] as Intercreditor Agent  
[ ] as Security Agent

[Date]

Dear Sirs,

1. We refer to Schedule 7 (*Insurance*) (the "**Insurance Schedule**") to the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the "**Company**") and the financial institutions referred to therein as Senior Secured Creditors, as amended, consolidated, supplemented, novated or replaced from time to time. Terms used herein shall bear the same meaning as in the Insurance Schedule. Any reference herein to a document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.
2. We, in our capacity as reinsurance brokers to [ ] (the "**Direct Insurer**"), confirm that facultative reinsurance of each Direct Insurance (other than those indicated by you) as required pursuant to Clause 1.2 of the Insurance Schedule are in full force and effect as of the date of this letter on and in respect of the risks set out in the Reinsurances evidenced in the policy cover notes attached hereto as Annex A and that all premiums which are required to have been paid at the date hereof in respect of such Reinsurances have been paid in full and such Reinsurances are placed with reinsurers and underwriters whose identities we have disclosed to you and whom we in good faith believe to be reputable and financially sound.
3. We confirm that each Reinsurance referred to in paragraph 2 above contains endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) to the Insurance Schedule.
4. Pursuant to instructions received from the Direct Insurer, we hereby undertake in respect of the Reinsurances referred to in the attached cover notes:
  - (a) in the case of any such Reinsurance, as and when the same is renewed, extended or replaced, and subject to market conditions current at the time of application for such renewal, extension or replacement, to use our best efforts to ensure that it complies with the requirements of the Insurance Schedule or such other requirements as you may approve in writing and that it contains endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) to the Insurance Schedule or in such other form as you may approve in writing;
  - (b) to pay to the accounts specified in the relevant loss payable clauses in the relevant policy documents without any set-off or deduction of any kind for any reason any and all proceeds from or other payments made pursuant to the

Reinsurances (including refunds of premiums) received by us from the reinsurers except as might otherwise be permitted in the relevant policy endorsement provisions or required by law or court order or as you may otherwise agree in writing;

- (c) to advise you:
  - (i) as soon as practical upon our becoming aware of any actual or proposed:
    - (A) cancellation or suspension of cover under any Reinsurance;
    - (B) reduction in limits or coverage or any increase in deductibles; and
    - (C) termination prior to the original expiry date of any Reinsurance;
  - (ii) as soon as practical of any default in the payment of any premium for any of the Reinsurances;
  - (iii) at least 45 days prior to the expiry of any Reinsurance if we have not received instructions to negotiate the renewal thereof from the Direct Insurer and/or any jointly insured parties or the agents of any such party and at least 5 Business Days prior to the expiry thereof if such Reinsurance has not been renewed;
  - (iv) if we receive instructions to negotiate the renewal of any Reinsurance, the details of such instructions and, upon the renewal of such Reinsurance, the terms of such renewal; and
  - (v) of any act or omission or any event of which we have knowledge and which might invalidate or render unenforceable in whole or in part any of the Reinsurances promptly upon our becoming aware of the same;
- (d) to disclose to you any fact, change of circumstance or occurrence material to the risks insured against under the Reinsurances or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions promptly upon our becoming aware of the same;
- (e) to notify you promptly following our becoming aware that we shall cease to act as reinsurance broker to the Direct Insurer; and
- (f) on your reasonable request and at your expense and subject to any legal, contractual or regulatory restrictions, to make those documents contained within our placing and claims files to which the Direct Insurer would be entitled to have access available to you or your Insurance Adviser at reasonable times and places, and to provide you with copies of any such documents.

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5. The above undertakings are given subject to our continuing appointment as reinsurance brokers to the Direct Insurer and in relation to the Reinsurances and the handling of claims in relation to them.

The contents of this letter may not be disclosed to any other party other than to any person:

- (a) to (or through) whom a Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and/or obligations under the Senior Finance Documents;
- (b) to (or through) whom a Secured Party enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by, reference to, the Senior Finance Documents or any Obligor; or
- (c) to whom all or any contents of this letter may be required, to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement

(a "Third Party") and, in the event that it is disclosed to a Third Party, any and all liability, howsoever arising to such Third Party is hereby expressly excluded. No person except the Senior Secured Parties has any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.

- 7. Our aggregate liability to you for any and all matters arising from this letter and the contents thereof shall in any and all events be limited to the sum of USD1,000,000 and, confined to direct losses in contract. Any and all other liability including, but not limited to liability in tort and liability for consequential losses is hereby expressly excluded. Notwithstanding the foregoing, nothing in this letter shall serve to limit our liability for death or personal injury caused by our negligence.
- 8. This letter shall be governed and construed in accordance with the laws of England and any disputes arising in connection with this letter shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall take place in Hong Kong and shall be conducted in English. The arbitration award shall be binding upon both parties.

Yours faithfully,

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[name of reinsurance broker]

## SCHEDULE 8

### HEDGING ARRANGEMENTS

1. The Company shall, prior to the making of any Advance under a Term Loan Facility, enter into agreements to the extent necessary to ensure that at least 50% of the aggregate amount drawn under the Term Loan Facilities (including the amount of such Advance) is subject, through interest rate swaps, caps, collars or other products agreed with the Intercreditor Agent, to either a fixed interest rate or interest rate protection for such period as reflects the repayment schedule for such Facility and with a final maturity date of not less than three years from the date upon which such Hedging Arrangement was first entered into in respect of such amount.
2. The purchase price of any such products may be paid for:
  - (a) by one or other of the other Obligor for the benefit of the Company (provided that such payment shall either constitute Equity (other than any Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents) or otherwise create no recourse to the Company); or
  - (b) out of the amount provided in the "Interest" Line Item (provided that the sum of the purchase prices, interest and any other amounts payable by the Company in respect of all such products does not exceed such amount).
3. Only a Lender or an Affiliate of a Lender may act as a Hedging Counterparty in respect of the Hedging Arrangements required by paragraph 1 above.
4. The Hedging Agreements are to be on the terms of the 1992 standard International Swap & Dealers Association, Inc. Master Agreement (the "ISDA Master Agreement") and the ISDA Schedule, together with such amendments as are acceptable to the Intercreditor Agent. All Hedging Agreements for swap transactions will provide for full two way payments (with the Company being a Fixed Rate Payer (as defined in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the "2000 Definitions")) and the Hedging Counterparty being a Floating Rate Payer (as defined in the 2000 Definitions)) and the payment measure and payment method for such swap transactions in the event of early termination, whether upon a "Termination Event" or an "Event of Default", shall be "Second Method" and "Market Quotation" respectively. Terms in quotations in this paragraph 4 shall have the meaning ascribed in the ISDA Master Agreement.
5. The Hedging Counterparties shall have equal security over the assets of the Company with the Senior Secured Creditors in accordance with the terms of this Agreement and the Deed of Appointment and Priority.
6. Any payments due from the Company under the Hedging Agreements (except for the purchase price or other amounts in respect of any interest rate caps, collars or other products paid by another Obligor) prior to the Expansion Opening Date, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall be a permitted Project Cost.

In this paragraph and paragraphs 7 and 10 below, "Realised Hedge Loss" means, in relation to a Hedging Counterparty at any time, the amount (if any) payable (but unpaid) by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is a party (but excluding any default interest) upon an early termination of any transaction or transactions thereunder which has been terminated in accordance with paragraph 9 below. The amount is to be calculated on a net basis across the transactions under such Hedging Agreement in accordance with the terms of the applicable Hedging Agreement.

7. Payments due from the Company under the Hedging Agreements following the Expansion Opening Date, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall (save for any such amounts paid by another Obligor) be a Financing Cost.
8. Except with the prior consent of the Intercreditor Agent, no amendments may be made to a Hedging Agreement to an extent that might reasonably be expected to result in:
  - (a) any payment under the Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in the Hedging Agreement;
  - (b) the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of the Hedging Agreement; or
  - (c) the Company becoming liable to make any payment under the Hedging Agreement in any currency other than in the currency provided for under the original provisions of the Hedging Agreement.
9. (The Company may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement and with the approval of the Intercreditor Agent *provided* that the approval of the Intercreditor Agent shall not be required in the case of any termination by reason of illegality when the requirements of paragraph 1. above are met following such termination.)
  - a)
    - (b) A Hedging Counterparty may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement;
    - (c) Unless a Hedging Counterparty has already exercised such rights in accordance with sub-paragraph (b) above, the Intercreditor Agent may require a Hedging Counterparty to terminate transactions under a Hedging Agreement where a declaration has been made by the Intercreditor Agent pursuant to Clause 19.2.2 (*Remedies following an Event of Default*).
    - (d) If a voluntary or mandatory prepayment is to be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) and following such prepayment the aggregate amount of the "Notional Amounts" (as defined in the 2000 Definitions) of all Hedging Agreements at such time would be greater

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than 125% of the principal amounts outstanding under the Term Loan Facilities, the Company shall unwind, in order of maturity immediately following such prepayment (unless otherwise agreed by the Intercreditor Agent), sufficient transactions under the Hedging Agreements (and pay associated breakage costs) on the first Payment Date (as defined in the 2000 Definitions) (or, where such prepayment falls within 5 Business Days (as defined in the relevant Hedging Agreement) prior to such first Payment Date, the second Payment Date) in respect of such transaction immediately succeeding such prepayment such that the Intercreditor Agent is satisfied that, following such terminations, the aggregate Notional Amounts of all transactions under all Hedging Agreements is not less than 50% and not more than 125% of the principal amounts outstanding under the Facilities.

10. In the event that a Hedging Agreement is terminated and the Company fails to pay any Realised Hedge Loss, such Realised Hedge Loss shall comprise an Unpaid Sum and interest shall accrue in respect thereof accordingly.

APPENDIX 1

FORM OF HEDGING COUNTERPARTY'S DEED OF ACCESSION

THIS DEED dated [ ] is supplemental to (i) a common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. as Company and the Senior Secured Creditors (as defined therein) and (ii) each of the Security Documents as defined in the Common Terms Agreement to which the Senior Secured Creditors are expressed to be party (the "Security Documents").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply:

[name of new Hedging Counterparty] (the "New Hedging Counterparty") of [address] hereby agrees with each other person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as a Hedging Counterparty.

The New Hedging Counterparty hereto agrees with each other person who is or who becomes a party to the Security Documents that with effect on and from the date of this Deed it shall be bound by each of the Security Documents and be entitled to exercise rights and be subject to obligations thereunder as a Senior Secured Creditor.

The initial telephone number, fax number, address and person designated by the New Hedging Counterparty for the purposes of Clause 29 (Notices) of the Common Terms Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by  
[insert name of New Hedging Counterparty and execution clause appropriate thereto and to manner of execution] )  
)  
)  
)  
)

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## SCHEDULE 9

### MANDATORY PREPAYMENT

1. To the extent that any Equity Issuance Proceeds are received by (or paid to the order of) the Company or any other Obligor, the Company shall ensure that an amount equal to the amount of such Equity Issuance Proceeds (excluding any such Equity Issuance Proceeds derived from any Equity to the extent such Equity is required or permitted under this Agreement to fund any Project Costs) shall be applied on the next Interest Payment Date after such receipt (or payment) towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall be deposited and retained in an Account.
2. With respect to the Net Cash Proceeds from any Asset Sale (where such Net Cash Proceeds exceed in aggregate an amount equal to USD50,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year) made by the Company or any other Obligor as to which the Company or any other Obligor has not re-invested such Net Cash Proceeds within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business, such Net Cash Proceeds shall be applied on the next Interest Payment Date after the date falling 12 months from the date of receipt towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall be deposited and retained in an Account.
3. On the next Interest Payment Date following the date on which the Company or any other Obligor receives any Termination Proceeds or Eminent Domain Proceeds, the Company shall ensure that such proceeds are applied towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall be deposited and retained in an Account.
4. If, for any Fiscal Year commencing with the Fiscal Year in which the Original Project Opening Date occurs, there shall be Excess Cash Flow, the Company shall apply the ECF Percentage of such Excess Cash Flow towards prepayment and cancellation of the Facilities in accordance with Clause 8.3. Each such prepayment shall be made on the next Interest Payment Date following the earlier of:
  - (a) the date on which the financial statements of the Company, referred to in paragraph 1 of Part A of Schedule 5 (*Covenants*), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders; and
  - (b) the date such financial statements are actually delivered,and, pending such application, shall be deposited and retained in an Account.
5. An amount equal to any Insurance Proceeds (other than those received by the Company or any other Obligor for any single loss or series of related losses not in excess of USD20,000,000 or its equivalent) shall be applied to the prepayment and cancellation of the Facilities in accordance with Clause 8.3 on the next Interest Payment Date falling not

less than 30 days after the Company's or Obligor's receipt of such Insurance Proceeds, unless each of the following conditions are satisfied or waived by the Intercreditor Agent within such 30 day period, in which event such amounts shall be applied to the repair or restoration of the Projects:

- (a) the damage or destruction does not constitute the destruction of all or substantially all of the Projects;
- (b) a Default has not occurred and is continuing (other than a Default resulting solely from such damage or destruction) and after giving effect to any proposed repair and restoration, no Default will result from such damage or destruction or proposed repair and restoration;
- (c) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that repair or restoration of the Projects to a condition substantially similar to their condition immediately prior to the event or events to which the relevant Insurance Proceeds relate, is technically and economically feasible within a 9 month period (where the damage or destruction occurs prior to the Diamond Completion Date) or a 12 month period (where it occurs thereafter) and that a sufficient amount of funds is or will be available to the Company to make such repairs and restorations;
- (d) the Company delivers to the Intercreditor Agent a plan (the "**Repair Plan**") describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith, in form and substance reasonably satisfactory to the Intercreditor Agent;
- (e) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that (A) the Company has sufficient Funds to achieve construction completion of the Projects and satisfy any existing or future liabilities, claims or other obligations of any kind and (B) a sufficient amount of funds is or will be available to the Company to make all payments on Financial Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in paragraph 1 of Part B of Schedule 5 (*Covenants*) during such repair period;
- (f) no Permit is necessary to proceed with the repair and restoration of the Projects and no material amendment to the Project Documents, or, except with the consent of the Senior Secured Creditors, any of the Senior Finance Documents, and no other instrument is necessary for the purpose of effecting the repairs or restoration of the Projects or subjecting the repairs or restoration to the Liens of the applicable Security Documents and maintaining the priority of such Liens or, if any of the above is necessary, the Company will be able to obtain the same as and when required; and
- (g) the Intercreditor Agent shall receive such certificates, opinions or other matters as it may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Projects or to preserve or protect the Senior Secured Creditors' interests hereunder and in the applicable Project Security.

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and, pending such application, such amount shall be deposited and retained in an Account.

After Insurance Proceeds have been applied to the repair or restoration of the Projects as provided in this Agreement, any excess Insurance Proceeds shall be applied on the next Interest Payment Date thereafter to the prepayment and cancellation of the Facilities in accordance with Clause 8.3.

6. [Not used.]
7. If all or substantially all of either Project is lost, damaged or destroyed or declared by any relevant Insurer to be a constructive total loss, the Company shall prepay and cancel the Facilities in accordance with Clause 8.3 and prepay all other amounts outstanding under the Senior Finance Documents within 90 days or, if earlier, upon receipt of Insurance Proceeds in respect of such loss, damage, destruction or declaration.
8. On the next Interest Payment Date following the date on which the Company or any other Obligor receives any Claim Proceeds, the Company shall apply an amount equal to such proceeds towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall deposit and retain such proceeds in an Account.

## SCHEDULE 10

### EVENTS OF DEFAULT

- (a) (The Company shall have failed to pay any principal of any Advance when due in accordance with the terms of the relevant Facility Agreement; or
  - (i)
  - (ii) the Company shall have failed to pay any interest on any Advance within 5 days after any such interest becomes due in accordance with the terms of the relevant Senior Finance Document; or
  - (iii) any other Obligor shall have failed to pay any other amount payable under any Senior Finance Document within 10 days after any such other amount becomes due in accordance with the terms of the relevant Senior Finance Document or in the event that any such other amount becomes due without a notice being given to the relevant Obligor, 10 days after notice to the relevant Obligor of the non-payment of such amount.
- (b) Any representation or warranty made or deemed made by any Obligor in any Senior Finance Document to which it is a party or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with any Senior Finance Document shall prove to have been incorrect in any material respect (or, in the case of the representations and warranties set out in paragraphs 21.1, 21.2 and 21.3 of Schedule 4 (*Representations and Warranties*), in any respect) on or as of the date made or deemed made and, in the case of an Obligor (other than the Company or a Wynn Obligor), such event, in the reasonable opinion of the Intercreditor Agent, could reasonably be expected to give rise to a Material Adverse Effect.
- (c) The Company shall default in the observance or performance of:
  - (i) paragraph 12(a) of Part A of Schedule 5 (*Covenants*) and, other than in respect of a Default arising by reason of paragraphs (v), (w), (x), (y), (z) or (aa) of Schedule 10 (*Events of Default*), such default shall continue unremedied for a period of 30 days;
  - (ii) paragraph 12(b) of Part A of Schedule 5 (*Covenants*) in so far as it relates to the Concession Contract or the Land Concession Contract;
  - (iii) paragraph 24 of Part A of Schedule 5 (*Covenants*); or
  - (iv) paragraph 1 of Part B of Schedule 5 (*Covenants*) and such default shall continue unremedied for a period of 5 days.
- (d) Any Obligor or the Performance Bond Provider shall default in the observance or performance of any other covenant or agreement contained in any Senior Finance Document to which it is a party (other than as provided in paragraphs (a) through (c) of this Schedule), and such default shall continue unremedied for a period of 30 days or, *provided* the relevant Obligor or the Performance Bond Provider is diligently pursuing action to remedy the default and it is of a nature that it is capable of being remedied, 60 days after the earlier of:
  - (i) the Company or such Obligor becoming aware of such default; and

(ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such default.

(e) Save where paragraph (a) of this Schedule applies, the Company or any other Obligor shall:

- (i) default in making any payment of any principal of any Financial Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Advances) on the scheduled due date with respect thereto;
- (ii) default in making any payment of any interest on any such Financial Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Financial Indebtedness was created; or
- (iii) default in the observance or performance of any other agreement or condition relating to any such Financial Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition (or any declaration by the holder of such Financial Indebtedness by reason thereof) is to cause immediately such Financial Indebtedness to become due prior to its stated maturity or (in the case of any such Financial Indebtedness constituting a Guarantee Obligation) to become payable.

*provided* that a default event or condition described in sub-paragraphs (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute a Default or Event of Default unless, at such time, the aggregate amount of the default in the principal payment in the case of sub-paragraph (i), the default in the interest payment in the case of sub-paragraph (ii) and the amount accelerated in the case of sub-paragraph (iii) of this paragraph (e) exceeds USD10,000,000 or its equivalent in the case of the Company and the other Obligors taken as a whole.

(f) (Any Obligor or the Performance Bond Provider shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Obligor or the Performance Bond Provider shall make a general assignment for the benefit of its creditors;

(ii) there shall be commenced against any Obligor or the Performance Bond Provider any case, proceeding or other action of a nature referred to in sub-paragraph (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days;

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- (iii) there shall be commenced against or any Obligor or the Performance Bond Provider any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
  - (iv) any Obligor or the Performance Bond Provider shall consent to, approve, or acquiesce in, any of the acts set forth in sub-paragraphs (i), (ii) or (iii) above; or
  - (v) any Obligor or the Performance Bond Provider shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due,

*provided* that no Event of Default shall be deemed to have occurred under this paragraph (f) as a result of any such action, event of condition by, against or concerning the Performance Bond Provider if:

- (vi) immediately upon (and, in any event, no more than three Business Days after) becoming aware or receiving notice thereof, the Company gives notice to the Intercreditor Agent of its intention to replace the Performance Bond Provider; and
  - (vii) within 60 days (or such shorter period as the Intercreditor Agent may determine is required pursuant to the Concession Contract) after such action, event or condition has occurred:
    - (A) the Performance Bond Provider has been replaced by a Person (the "**Replacement Performance Bond Provider**") acceptable to the Intercreditor Agent;
    - (B) the Replacement Performance Bond Provider has provided a replacement Concession Contract-Performance Bond and acceded to the terms of the Deed of Appointment and Priority, in each case on terms acceptable to the Intercreditor Agent; and
    - (C) the Intercreditor Agent is satisfied that no breach of the Concession Contract or any applicable Legal Requirement has occurred or will result from such replacement, and that the replacement complies, and has been authorised by the Macau SAR in accordance with, the Concession Contract and all other applicable Legal Requirements.
- (g) (Any Person shall engage in any "prohibited transaction" (as defined in section 406 of ERISA or section 4975 of the Code) involving any Plan;
- i)
  - (ii) any "accumulated funding deficiency" (as defined in section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favour of the PBGC or a Plan shall arise on the assets of any Obligor or any Commonly Controlled Entity;

- (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Intercreditor Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA;
- (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under section 4041(b) of ERISA;
- (v) any Obligor or any Commonly Controlled Entity shall, or in the reasonable opinion of the Intercreditor Agent is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan; or
- (vi) any Obligor, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by sections 601 and following of ERISA, section 4980B of the Code, or the corresponding provisions of applicable state law;

and in each case in sub-paragraphs (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect.

- (h) One or more judgments or decrees shall be entered against the Company or any other Obligor involving for the Company and the other Obligors taken as a whole a liability (not paid or covered by insurance as to which the relevant insurance company has acknowledged coverage) of USD10,000,000 or its equivalent or more, and all such judgments or decrees, in either case, shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof.
- (i) Any of the Senior Finance Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Obligor shall in writing to any Senior Secured Creditor in the event that any Senior Secured Creditor is seeking to exercise its rights or in any Proceedings so assert, or any Lien created or acknowledged by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created or acknowledged thereby.
- (j) The Company or any other Obligor shall breach or default under in any material respect any material term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than any Resort Management Agreement where any such breach or default thereof could not reasonably be expected to prejudice the Concession Contract, the Land Concession Contract or any rights, benefits or interests arising thereunder) and such breach or default shall continue unremedied for 30 or, save

in the case of any payment default, provided the Company or such Obligor is diligently pursuing action to remedy the default and it is of a nature that is capable of being remedied, 60 days after the earlier of:

- (i) the Company or such Obligor becoming aware of such breach or default; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default.
- (k) Any party (other than the Company) shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than any Resort Management Agreement where any breach or default thereof could not reasonably be expected to prejudice the Concession Contract, the Land Concession Contract or any rights, benefits or interests arising thereunder) and such breach or default shall continue unremedied for 90 days after the earlier of:
- (i) the Company or any other Obligor becoming aware of such breach or default; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default.

and, in the reasonable opinion of the Intercreditor Agent, such breach or default could reasonably be expected to have a Material Adverse Effect.

- (l) Any of the Transaction Documents shall terminate or be terminated or cancelled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date *provided* that the occurrence of any of the foregoing events with respect to any Major Project Document (other than the Concession Contract, the Land Concession Contract, the Construction Contract or the IP Agreement) shall constitute an Event of Default under this paragraph (l) only if the same could reasonably, in the reasonable opinion of the Intercreditor Agent, be expected to result in a Material Adverse Effect and the same shall continue unremedied for 90 days after the earlier of:
- (i) the Company or any other Obligor becoming aware of such occurrence; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such occurrence,

*provided* that in the case of any such Major Project Document (other than the Concession Contract, the Land Concession Contract, the Construction Contract or the IP Agreement), if the occurrence is not the result of the breach or default by an Obligor in any material respect of any material term, condition, provision, covenant, representation or warranty, then no Event of Default shall be deemed to have occurred as a result thereof under this paragraph (l) if the Company provides written notice to the Intercreditor Agent immediately upon (but in no event more than 3 Business Days after) the Company or such other Obligor becoming aware of such occurrence that it intends to replace such Project Document and:

- (A) the Company obtains a replacement obligor or obligors for the affected party;

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- (B) the Company or such other Obligor enters into a replacement Major Project Document on terms no less beneficial to the Company or such other Obligor and the Senior Secured Creditors in any material respect than the Major Project Document being replaced within 60 days of such occurrence, *provided* that the replacement Major Project Document may require the Company or such other Obligor to pay amounts under the replacement Major Project Document in excess of those that would have been payable under the replaced Major Project Document; and
  - (C) in the reasonable opinion of the Intercreditor Agent, such occurrence, after considering any replacement obligor and replacement Major Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect.
- (m) A Change of Control shall occur.
  - (n) Any Subordinated Debt or the Performance Bond Facility Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Obligors as provided in the Senior Finance Documents and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be.
  - (o) The Company or any other Obligor shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect.
  - (p) [Not used]
  - (q) [Not used]
  - (r) The Company shall abandon either of the Projects (other than the Diamond Expansion) or otherwise cease to pursue them.
  - (s) Any call or drawing made by the Macau SAR under the Concession Contract Performance Bond unless the Concession Contract Performance Bond is fully reinstated within 30 days thereof in accordance with the Concession Contract, no other Event of Default has occurred or will result from such reinstatement.
  - (t) The Company or any other Obligor shall fail to at all times maintain in full force and effect the insurance policies required by Schedule 7 (*Insurance*) and paragraph 10.4 of Part A of Schedule 5.

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- (u) Any Governmental Authority takes any action or there is a change in (or in the interpretation, administration or application of) or the introduction of any Legal Requirement:
    - (i) which deprives the Company or any other Obligor of the use of all or any material part of its Property (including nationalisation, expropriation, modification, suspension or extinguishment of any material rights benefiting or the imposition of any restrictions materially and adversely affecting the Existing Project or the Expansion by such Governmental Authority);
    - (ii) which prevents the Company or any other Obligor from conducting its business or operations, or a material part thereof, in a similar manner as contemplated at the Signing Date; or
    - (iii) which, in the reasonable opinion of the Intercreditor Agent, otherwise could reasonably be expected to have a Material Adverse Effect,and, in each case, such action, change or introduction or the effects thereof, are not removed or stayed within 30 days of the occurrence of such action, change or introduction.
  - (v) Any temporary administrative intervention is made by the Macau SAR pursuant to article 79 of the Concession Contract.
  - (w) The Macau SAR takes any formal measure seeking the unilateral dissolution of the Concession Contract pursuant to article 80 thereof or the Macau SAR gives notice pursuant to article 80(3) of the Concession Contract and the Company fails to comply with the terms thereof within the grace period specified therein.
  - (x) The Intercreditor Agent considers the subject matter of any negotiations required to be notified to it pursuant to paragraph 24(c) of Part A of Schedule 5 (*Covenants*) is such as could reasonably give rise to an entitlement of the Macau SAR to unilaterally dissolve the Concession Contract pursuant to article 80 thereof.
  - (y) Any consultations are commenced as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement and (save for the purpose of giving notice to the Macau SAR that the Security Agent intends to take action to enforce all or any of the pledges constituted by the Company Share Pledge, the Wynn International Share Charge and/or the Wynn HK Share Charge which may be given by the Security Agent immediately upon such consultations being commenced) the Intercreditor Agent considers the subject matter of such consultations is reasonably likely to give rise to (a) the taking of any action to terminate the Concession Contract or (b) an agreement to terminate the Concession Contract.
  - (z) The Land Concession Contract is terminated or rescinded or the Macau SAR takes any formal measure seeking any termination of the Land Concession Contract pursuant to Clause 15 thereof or any rescission pursuant to Clause 16 thereof.
  - (aa) The Macau SAR gives any notice pursuant to paragraph C7 of the Land Concession Consent Agreement.
  - (bb) A Material Adverse Effect has occurred which is continuing.

SCHEDULE 11

TRANSFERS AND ACCESSION

Part A

Form of Agent's Deed of Accession

THIS DEED dated [ ] is supplemental to each of the Senior Finance Documents as defined in a common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein) to which [name of existing Agent] is expressed to be a party (the "Senior Finance Documents").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[name of new Agent] (the "New Agent") of [address] hereby agrees with each other person who is or who becomes a party to the Senior Finance Documents that with effect on and from the date of this Deed it shall be bound by the Senior Finance Documents and be entitled to exercise rights and be subject to obligations thereunder as [specify Agent].

The Facility Office of the New Agent is located at [ ].

The initial telephone number, fax number, address and person designated by the New Agent for the purposes of Clause 29 (Notices) of the Common Terms Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by  
[insert name of new Agent and  
execution clause appropriate  
thereto and to manner of  
execution] )  
)  
)  
)  
)

Part B

Form of Novation Certificate

To: [ ] as Intercreditor Agent

NOVATION CERTIFICATE

relating to [description of the relevant Facility Agreement] (the "Facility Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the "Company") and [list other parties] and the common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between the Company and the Senior Secured Creditors (as defined therein).

1. Terms defined in the Common Terms Agreement shall, subject to any contrary indication, have the same meanings herein and the principles of construction and rules of interpretation set out therein shall also apply. The terms Lender, Transferee, Proposed Transfer Date, Lender's Participation and Amount Transferred are defined in the schedule hereto.
2. The Lender confirms that the Lender's Participation is an accurate summary of its participation in the Facility Agreement and requests the Transferee to accept and procure the transfer by novation to the Transferee of a percentage of the Lender's Participation (equal to the percentage that the Amount Transferred is of the aggregate of the component amounts (as set out in the schedule hereto) of the Lender's Participation the "Transferred Percentage") by counter-signing and delivering this Novation Certificate to the Intercreditor Agent at its address for the service of notices specified in the Common Terms Agreement, in accordance with Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement. The Lender assigns, subject to the aforementioned acceptance by the Transferee, a proportion of the rights and benefits held by the Lender (in its capacity as such) under or in connection with the Senior Finance Documents which proportion shall be equal to the Transferred Percentage.
3. The Transferee hereby requests the Intercreditor Agent to accept this Novation Certificate as being delivered to the Intercreditor Agent pursuant to and for the purposes of Clause 21.6 (*Transfer by Lenders*) of the Common Terms Agreement so as to take effect in accordance with the terms thereof on the Proposed Transfer Date or on such later date as may be determined in accordance with the terms thereof.
4. The Transferee confirms that it has received a copy of each of the Senior Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and shall not hereafter rely on the Lender to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and shall not rely on the Lender to assess or keep under review on its behalf, the financial condition, creditworthiness, condition, affairs, status or nature of the Obligors or the Projects.
5. The Transferee hereby undertakes with the Lender and each of the other parties to the Facility Agreement that it shall perform in accordance with their terms all those obligations which by the terms of the Facility Agreement shall be assumed by it after delivery of this Novation Certificate to the Intercreditor Agent and satisfaction of the conditions (if any) subject to which this Novation Certificate is expressed to take effect.

6. The Transferee also agrees that, with effect from the Proposed Transfer Date or such later date as may be determined in accordance with Clause 21.6 (*Transfer by Lenders*) of the Common Terms Agreement, it shall be bound by the terms of:
  - (a) the Common Terms Agreement as if it had been a party to such agreement in the capacity of a [*specify Lender*]; and
  - (b) each of the Security Documents to which the Lenders are party as if it had been a party to those documents in the capacity of a Lender thereunder.
7. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any document relating thereto and assumes no responsibility for the financial condition of the Obligors or for the performance and observance by the Obligors of any of their obligations under the Senior Finance Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.
8. The Lender hereby gives notice that nothing herein or in the Senior Finance Documents (or any document relating thereto) shall oblige the Lender to (a) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Senior Finance Documents transferred pursuant hereto or (b) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including the non-performance by any of the Obligors or any other party to the Senior Finance Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in (a) or (b).
9. This Novation Certificate and the rights, benefits and obligations of the parties hereunder shall be governed by and construed in accordance with English law.

**THE SCHEDULE**

1. Lender:
2. Transferee:
3. Proposed Transfer Date:
4. Lender's Participation:

Lender's undrawn Available Commitment\*

Lender's Portion of each Advance

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5. Amount Transferred:

[Lender]

By:

Date: \_\_\_\_\_

[Transferee]

By:

Date: \_\_\_\_\_

[ \_\_\_\_\_ ]

as Intercreditor Agent

By:

Date: \_\_\_\_\_

**Administrative Details of Transferee**

Address:

Contact Name:

Account for Payments:

Standing Payment Instruction:

Fax:

Telex:

Telephone:

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\* Details of the Lender's undrawn Available Commitment should not be completed after the last day of the Availability Period.

**Part C**

**Form of Confidentiality Undertaking**

To: [Insert name of potential Transferee/participant]

[Date]

Dear Sirs,

We understand that you are considering [acquiring an interest (the "Acquisition") in/accepting an appointment as facility agent under [description of the relevant Facility Agreement] (the "Facility Agreement")/accepting an appointment as intercreditor agent under the Senior

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Finance Documents (the "Appointment")) in relation to the design, development, construction, ownership, operation and maintenance of the Wynn Macau hotel, retail and destination gaming resort project (the "Project"). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. *Confidentiality Undertaking* You undertake (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, (b) to use the Confidential Information only for the Permitted Purpose, (c) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(c) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it, and (d) not to make enquiries of any of the Obligors or any of their officers, directors, employees or professional advisers relating directly or indirectly to the [Acquisition/Appointment].
2. *Permitted Disclosure* We agree that you may disclose Confidential Information:
  - (a) to members of the [Purchaser/Appointee] Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the [Purchaser/Appointee] Group;
  - (b) [subject to the requirements of the Senior Finance Documents, to any person to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of the rights, benefits and obligations which you may acquire under the Facility Agreement or with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Senior Finance Documents or any of the Obligors so long as that person has delivered a letter to you in equivalent form to this letter;] and
  - (c) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the [Purchaser/Appointee] Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the [Purchaser/Appointee] Group.
3. *Notification of Required or Unauthorised Disclosure* You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2[(c)/(b)]<sup>11</sup> or upon becoming aware that Confidential Information has been disclosed in breach of this letter.
4. *Return of Copies* If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or

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<sup>11</sup> If paragraph 2(b) deleted.

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permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2[(c)/(b)]<sup>12</sup> above.

5. *Continuing Obligations* The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to [or otherwise acquire (by assignment or sub-participation) an interest, direct or indirect, in] the [Facility Agreement/Senior Finance Documents] or (b) twelve months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).
6. *No Representation; Consequences of Breach, etc* You acknowledge and agree that:
  - (a) neither we nor any Obligor nor any of our or their respective officers, employees or advisers (each a "Relevant Person") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and
  - (b) we or any Obligor may be irreparably harmed by the breach of the terms hereof and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.
7. *No Waiver; Amendments, etc* This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges hereunder. The terms of this letter and your obligations hereunder may only be amended or modified by written agreement between us.
8. *Inside Information* You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.

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<sup>12</sup> If paragraph 2(b) deleted.

9. *Nature of Undertakings* The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of each Obligor.
10. *Third party rights*
- (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this letter.
  - (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
  - (c) The parties to this letter do not require the consent of the Relevant Persons to rescind or vary this letter at any time.
11. *Governing Law and Jurisdiction* This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.
12. *Definitions* In this letter (including the acknowledgement set out below) terms defined in or by reference to the Facility Agreement shall, unless the context otherwise requires, have the same meaning, the principles of construction and rules of interpretation referred to therein shall also apply and:
- "**Confidential Information**" means any information relating to the Project, any Obligor, the Transaction Documents, any agreement relating to the [Facility Agreement/Senior Finance Documents] and/or the [Acquisition/Appointment] provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you thereafter, other than from a source which is connected with the Obligors and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.
- "**Obligors**" means Wynn Resorts (Macau) S.A. and certain other persons, as defined in the Senior Finance Documents, who have a direct or indirect interest in its share capital.
- "**Permitted Purpose**" means considering and evaluating whether to [enter into/accept] the [Acquisition/Appointment].
- "**Project Documents**" means the documents entered into by Wynn Resorts (Macau) S.A. and its contractors or subcontractors in connection with the Project.

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"[Purchaser/Appointee] Group" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985).

"Senior Finance Documents" means the Facility Agreement, the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and certain financial institutions and other Senior Finance Documents as defined in such Common Terms Agreement.

"Transaction Documents" means the Senior Finance Documents and the Project Documents.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

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For and on behalf of

*[Insert name of Lender/Agent]*

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To:

[Lender/Agent]  
The Obligors

We acknowledge and agree to the above:

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For and on behalf of

[Potential Transferee/participant/appointee]

Date:

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SCHEDULE 12

PERMITS

THE PERMITS DESCRIBED IN PART A AND PART B OF THIS SCHEDULE 12 (*PERMITS*) HAVE BEEN ISSUED AND ARE IN FULL FORCE AND EFFECT.

Part A

Permits required on or before the CP Satisfaction Date

1. Construction licence.
2. Enactment of legislation by the Macau SAR providing for casino operators to be grantors of credit to patrons.
3. Macau SAR approval of the location of the horizontal property comprised in the Casino Project.
4. Publication of the Land Concession Contract in the Official Bulletin.
5. Provisional registration of the rights of the Company to the land which is the subject of the Land Concession Contract (for the purposes of this Schedule, the "Land").
6. Macau SAR confirmation that the scope of insurances set out in Schedule 7 satisfy the requirements of Article 40 of the Concession Contract.
7. Agreement by the Gambling Inspection and Coordination Bureau and the Financial Bureau of the Macau SAR as to the identity of the Auditor in accordance with Article 57 of the Concession Contract.
8. Macau SAR authorisation: (i) pursuant to article 16(1) of the Concession Contract to pledge the Company's shares; (ii) pursuant to article 16(5) of the Concession Contract to charge the shares of the Company's shareholders; (iii) pursuant to article 21(3) of the Concession Contract to execute a power of attorney in relation to the Land; (iv) pursuant to article 42(1) of the Concession Contract to mortgage the portion of the Land, including any constructions thereon, referred to therein; and (v) pursuant to article 42(1) of the Concession Contract to pledge the gaming equipment and utensils of the Company.
9. To the extent applicable, disclosure to Macau SAR of any serious alteration to the economic or financial conditions of the Company, the Company's shareholders or certain of the Company's Affiliates pursuant to article 23 of the Concession Contract.

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**Part B**

**Permits required after the CP Satisfaction Date**

1. Project Certificates of Occupancy.
2. Definitive registration of the rights of the Company to the land which is the subject of the Land Concession Contract and definitive registration of the horizontal property comprised in the Projects.
3. Permits required under Article 84 of the Concession Contract.
4. Amended construction licence for the Projects (including the Expansion).
5. Written confirmation from Macau SAR Department of Public Works that, upon approval of the amended construction licence for the Projects (including the Expansion), the Land Concession Contract will be amended as soon as practicable to the extent required to reflect the Projects as actually built pursuant to the original construction licence and the amended construction licence.

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SCHEDULE 13

[NOT USED]

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SCHEDULE 14

FORM OF ADDITIONAL LENDER'S ACCESSION DEED

THIS DEED dated [ ] is supplemental to a common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein).

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of Additional Lender*] (the "New Additional Lender") of [*address*] hereby agrees with each other person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as an Additional Lender.

The initial telephone number, fax number, address and person designated by the New Additional Lender for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by )  
[*insert name of Additional* )  
*Lender and execution clause* )  
*appropriate thereto and to* )  
*manner of execution*] )

SCHEDULE 15

FORM OF COMPLIANCE CERTIFICATE

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

We refer to an agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions named therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall bear the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.

We confirm on [insert date of relevant financial statements] the following:

	Actual	Required
1. Leverage Ratio	[ ]	[ ]
2. Interest Coverage Ratio	[ ]	[ ]
3. Excess Cash Flow	Actual	

We attach the information and calculations necessary for determining the above ratios and amounts.

We hereby confirm that no Default has occurred and is continuing.

OR

We hereby give you notice of the occurrence of the following Default which is continuing:

[ ]

We set out below the steps being taken to remedy such Default:

1.

Yours faithfully,

Name:  
Responsible Officer  
for and on behalf of  
Wynn Resorts (Macau) S.A.

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SCHEDULE 16

[NOT USED]

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SCHEDULE 17

[NOT USED]

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SCHEDULE 18

MONTHLY CONSTRUCTION PERIOD REPORT

List of Minimum Information to be Included

A. Summary

B. Project Schedule

1. Describe (in respect of both work under the Construction Contract and Company scope including FF&E and pre-opening activities):
  - 1.1 Overall progress of work broken down by major area
  - 1.2 Major activities that have taken place in the period since the last report
  - 1.3 Major activities scheduled to take place in the period until the next report
  - 1.4 The Company's estimate of:
    - (a) The date of Substantial Completion for the Original Project and the Expansion
    - (b) The Opening Date (and satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof) for the Original Project and the Expansion Opening Date
    - (c) The date of Expansion Completion
2. With reference to the attached Project Schedule:
  - 2.1 Highlight changes in the Project Schedule from the last report
  - 2.2 Highlight major milestones achieved in the period since the last report
  - 2.3 Describe remedial activities being taken to accelerate the works (if any)

C. Manpower

1. Indicate current staffing level vs. projected for the Company, the PASA Agent and the Construction Contractor
2. Indicate any fatalities or injuries associated with the Projects incurred by the Company, the PASA Agent, the Prime Contractor, any Subcontractor or any other person in the period since the previous report with detail as to the nature of injuries incurred and cumulative figures since the [Date of Commencement] under and as defined in the Construction Contract
3. Highlight any major executive positions filled or vacated in the period since the last report

**D. Other**

1. List material Permits issued or made by or with a Governmental Authority obtained by the Company in the period since the last report
2. List any requests for change orders or variations under the Construction Contract received, requested, agreed or approved in the period since the last report
3. Hedging Arrangements entered into in the period since the last report

**E. Lease and Subconcession Agreements**

1. List total space leased vs. vacant for each of the following categories:
  - 1.1 Restaurants
  - 1.2 Retail
  - 1.3 Other facilities
2. List tenants secured and target date of opening for each space indicated as leased
3. Describe any agreements, whether in-principle or otherwise, entered into by the Company in the period since the last report in respect of subconcessions under the Concession Contract

**F. Operating Results of Projects**

Following the Opening Date of the Original Project until the Expansion Opening Date, provide the operating results of the Company in the preceding month, including:

- (a) Operating revenues, broken down by major source category
- (b) Operating costs, broken down by major line item
- (c) Working capital and other adjustments for non-cash items
- (d) Other cash payments or reserves made from operating cashflow
- (e) Net cashflow from operations and the sum transferred to the Construction Disbursement Accounts

**G. Schedules**

Photographs

**H. Attachments**

1. Project Schedule
2. Actual vs. projected expenditure "S" curve
3. Monthly Construction Progress Report

SCHEDULE 19

FORMS OF OPENING CONDITIONS CERTIFICATES

Part A

Form of Company's Opening Conditions Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to the common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of the definition of "Opening Conditions" in Clause 1.1 (*Definitions*) of the Common Terms Agreement in respect of the Original Project.
3. We hereby certify, as at the date of this certificate, that:
  - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of the Original Project for their intended uses have been installed and are operational;
  - (ii) all the Project Certificates of Occupancy have been issued, each area in which any operation of casino games of chance or other forms of gaming will be carried out has been classified as a casino or gaming zone in accordance with Article 9 of the Concession Contract and (other than any Permit issued or made by or with a Governmental Authority the failure of which to obtain or make could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit issued or made by or with a Governmental Authority required under applicable Legal Requirements to be obtained or made prior to the Opening Date has been obtained or made;
  - (iii) the Original Project (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) is fully open for business to the general public and at least, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables are in operation, 80% of restaurant outlets are open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating).

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- (iv) the remaining work on the Projects will not materially affect the operation of the Original Project;
  - (v) the failure to complete the remaining work will not materially affect the operation of the Original Project; and
  - (vi) the Company has available a fully trained staff to operate the Original Project including the hotel and casino.

Yours faithfully,

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Name:  
Responsible Officer  
for and on behalf of  
Wynn Resorts (Macau) S.A.

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Part B

Form of Technical Adviser's Opening Conditions Certificate

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to the common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of the definition of "Opening Conditions" in Clause 1.1 (*Definitions*) of the Common Terms Agreement in respect of the Original Project.
3. We hereby certify, as at the date of this certificate, that:
  - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of the Original Project for their intended uses have been installed and are operational;
  - (ii) all the Project Certificates of Occupancy have been issued and (other than any Permit made or issued by or with a Governmental Authority the failure of which to make or obtain could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be made or obtained prior to the Opening Date have been obtained;
  - (iii) the Original Project (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) is fully open for business to the general public and at least, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables are in operation, 80% of restaurant outlets are open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating);
  - (iv) the remaining work on the Projects will not materially affect the operation of the Original Project; and
  - (v) the failure to complete the remaining work will not materially affect the operation of the Original Project.

Yours faithfully,

Name:  
For and on behalf of  
[Technical Adviser]

## AIRCRAFT TIME SHARING AGREEMENT

THIS AIRCRAFT TIME SHARING AGREEMENT (the "Agreement") is made and entered into as of this 25th day of November, 2002, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("Provider"), and Stephen A. Wynn, an individual ("Lessee").

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Time Sharing of the Aircraft. Subject to the terms and conditions of this Agreement, Provider shall provide Lessee with transportation services on a non-exclusive basis using Provider's aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW (the "Aircraft"). This Agreement is intended to be a time sharing agreement within the meaning of 14 C.F.R. Section 91.501(c)(1).

2. Term. The term of this Agreement (the "Term") shall commence on the date hereof (the "Commencement Date") and end on the earlier October 30, 2009 or on thirty (30) days' notice of termination by either party to the other (the "Expiration Date")

3. Delivery to Lessee. Upon the request of Lessee, subject to the availability of the Aircraft as determined by Provider, Provider shall make the Aircraft available to Lessee at such location as Lessee may reasonably request. Lessee acknowledges that Provider currently bases the Aircraft at McCarran International Airport, Las Vegas, Nevada (the "Base").

4. Rent.

(a) Lessee shall pay to Provider, for Lessee's use of the Aircraft during the Term the following amounts (referred to collectively as "Rent") within 30 days of receipt of an invoice from Provider or its representative with respect to such use:

- (i) twice the cost of the fuel, oil and other additives consumed;
- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
- (iii) all expenses for catering and in-flight entertainment materials;
- (iv) all expenses for flight planning and weather contract services;
- (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation;
- (vi) all communications charges, including in-flight telephone.

and

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) For the sake of clarification, flights to ferry the Aircraft to the delivery location specified by Lessee pursuant to section 3, and flights to return the Aircraft to the Base or such other location as the parties agree pursuant to section 5, shall be deemed to be use of the Aircraft by Lessee.

5. Return to Base. On the earlier of the Expiration Date or the termination of this Agreement pursuant to section 16(a)(i) and, unless Provider agrees to the contrary, upon the conclusion of each flight of the Aircraft by Lessee under this Agreement, the Aircraft shall be returned to the Base or such other location as Provider and Lessee may agree.

6. Use of Aircraft.

(a) Lessee shall use the Aircraft only for the transportation of its employees and guests and shall not obtain compensation for such transportation from any person.

(b) Lessee shall not make the Aircraft available to a political candidate in connection with a political campaign by such candidate.

(c) Lessee shall not violate, and shall not permit any of its employees, agents or guests to violate, any applicable law, regulation or rule of the United States, and state, territory of local authority, or any foreign government or subdivision thereof, and shall not bring or cause to be brought or carried on board the Aircraft, or permit any employee, agent or guest to bring or cause to be brought or carried on board the Aircraft, any contraband or unlawful articles or substances, or anything that is contraband or is an unlawful article of substance in any jurisdiction into or over which the Aircraft is to operate on behalf of Lessee.

(d) Lessee shall, and shall cause its employees, agents and guests to, comply with all lawful instructions and procedures of Provider and its agents and employees regarding the Aircraft, its operation or flight safety.

(e) Lessee acknowledges that its discretion in determining the origin and destination of flights under this Agreement shall be subject to the following: (i) such origin and destination, and the routes to reach such origin and destination, are not within or over (A) an area of hostilities, (B) an area excluded from coverage under the insurance policies maintained by Provider with respect to the Aircraft or (C) a country or jurisdiction for which exports or transactions are subject to specific restrictions under any United States export or other law or United Nations Security Council Directive, including without limitation, the Trading With the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. App. Sections 1700 et seq. and the Export Administration Act, 50 U.S.C. App. Sections 2401 et seq.; (ii) the flights proposed by Lessee shall not cause (A) the Aircraft or any part thereof (1) to be used predominately outside of the United States within the meaning of the Section 168(g)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), and (2) to fail to be operated to and from the United States within the

meaning of Section 168(g)(4)(A) of the Code; and (B) any item of income, gain, deduction, loss or credit with respect to the transactions contemplated by this Agreement to be treated as derived from, or allocable to, sources without the United States within the meaning of Section 862 of the Code; (iii) the proposed flights do not require the flight crew to exceed any flight or duty time limitations that Provider imposes upon its flight crews; and (iv) in the judgment of Provider, the safety of flight is not jeopardized.

(f) Lessee further acknowledges that, if, in the view of Provider (including, its pilot-in-command), flight safety may be jeopardized, Provider may terminate a flight or refuse to commence it without liability for loss, injury or damage occasioned by such termination or refusal. Lessee acknowledges that Provider shall not be liable for any loss, damage, cost or expense arising from any delay, cancellation or failure to furnish any transportation pursuant to this Agreement when caused by government regulation, law or authority, mechanical difficulty or breakdown, war, civil commotion, strikes or other labor disputes, weather conditions, acts of God, public enemies or any other cause beyond Provider's control.

(g) The parties hereby acknowledge and agree that:

(i) this Agreement is subject and subordinate to: (1) that lease Agreement between Provider and World Travel, LLC, dated January 29, 2002 (the "Master Lease"); (2) that certain Aircraft Security Agreement (the "Aircraft Security Agreement") made as of October 30, 2002, by Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 with and World Travel, LLC, a Nevada limited liability company as Trustor, and World Travel, LLC in favor of Wynn Las Vegas, LLC, a Nevada limited liability company (the "Company"); and (3) the rights of the company (or its assignee) under the Aircraft Security Agreement, including, without limitation, the right of the Company to inspect and take the possession of the Aircraft from time to time;

(ii) after an Aircraft Event of Default (as defined in that certain Loan Agreement (the "Loan Agreement"), dated as of October 30, 2002, among the Company, Wells Fargo Bank Nevada, National Association, not in its individual capacity, except as expressly stated therein, but solely as collateral agent (the "Collateral Agent"), and the persons named on Schedule IA thereto (the "Lenders") the Aircraft shall be surrendered by Provider at the election of the Company (or its assignee);

(iii) the parties hereby waive any right that they might have to any notice of the Company's (or its assignee's) intention to inspect, take possession of, or exercise any other right or remedy in respect of the Aircraft under the Aircraft Security Agreement;

(iv) the parties hereby waive, as against the Company, all rights to any set-off, defense, counterclaim, or cross-claim that they may hold against the Company; and

upon any Aircraft Event of Default (as defined in the Loan Agreement), neither party shall have any further rights in and to the Aircraft.

(h) The parties agree that the aggregate consideration paid for transportation services provided under the agreement will not at any time exceed \$5 million.

7. Pilots. For all flights of the Aircraft by Lessee pursuant to this Agreement, Provider shall cause the Aircraft to be operated by pilots who are duly qualified under the Federal Aviation Regulations, including without limitation, with respect to currency and type-rating, and who meet all other requirements established and specified by the insurance policies required hereunder.

8. Operation and Maintenance Responsibilities of Provider. Provider shall be in operational control of the Aircraft at all times during the Term. Provider shall be solely responsible for the operation and maintenance of the Aircraft.

9. Liens. Lessee shall not directly or indirectly create or incur any liens on or with respect to (i) the Aircraft or any part thereof, (ii) Owner's title thereto, (iii) any interest of Provider therein, (and Lessee will promptly, at its own expense, take such action as may be necessary to discharge any such lien), except (a) the respective rights of Provider and Lessee as herein provided and (b) liens created by or caused to be created by Owner or Provider.

10. Taxes.

(a) Except for any taxes on, or measured by, the net income of Provider imposed by the United States government or any state or local government or taxing authority in the United States, which shall be the sole responsibility of Provider, Lessee shall pay to and indemnify Provider and its employees and agents (collectively, the "Indemnitees") for, and hold each Indemnitee harmless from and against, on an after-tax basis, all other income, personal property, ad valorem, franchise, gross receipts, rental, sales, use, excise, value-added, leasing, leasing use, stamp, landing, airport use, or other taxes, levies, imposts, duties, charges, fees or withholdings of any nature, together with any penalties, fines, or interest thereon ("Taxes") arising out of the transactions between Provider and Lessee contemplated by this Agreement or Lessee's use of the Aircraft and imposed against any Indemnitee, Lessee, or the Aircraft, or any part thereof, by any federal or foreign government, any state, municipal or local subdivision, any agency or instrumentality thereof, or other taxing authority upon or with respect to the Aircraft, or any part thereof, or upon the ownership, delivery, leasing, possession, use, operation, return, transfer or release thereof, or upon the rentals, receipts or earnings arising therefrom. Lessee shall have the right to contest any Taxes attributable to Lessee; provided that (a) Lessee shall have given to Provider written notice of any such Taxes, which notice shall state that such Taxes are being contested by Lessee in good faith with due diligence and by appropriate proceedings and that Lessee has agreed to indemnify each Indemnitee against any cost, expense, liability or loss (including, without limitation, reasonable attorneys' fees) arising from or in connection with such contest; (b) in Provider's sole judgment, Provider has received adequate assurances of payment of such contested Taxes; and (c) counsel for Provider shall have determined that the nonpayment of any such Taxes or the contest of any such payment in such proceedings does not, in the sole opinion of such counsel, adversely affect the title, property or rights of Provider. In case any report or return is required to be made with respect to any Taxes attributable to Lessee, Lessee will either (after notice to

Provider) make such report or return in such manner as will show the ownership of the Aircraft in Provider and send a copy of such report or return to Provider, or will notify Provider of such requirement and make such report or return in such manner as shall be satisfactory to Provider. Provider agrees to cooperate fully with Lessee in the preparation of any such report or return.

(b) Without limiting the generality of the foregoing, Lessee shall pay to Provider any federal excise taxes applicable to Lessee's use, or Lessee's payment for Lessee's use, of the Aircraft.

11. Insurance: Provider shall maintain in effect at its own expense throughout the Term, insurance policies containing such provisions and providing such coverages as Provider deems appropriate.

12. Loss or Damage

(a) Lessee shall indemnify, defend and hold harmless Provider and its officers, directors, agents and employees from and against any and all liabilities, claims (including, without limitation, claims involving or alleging Provider's negligence and claims involving strict or absolute liability in tort), demands, suits, causes of action, losses, penalties, fines, expenses (including, without limitation, attorneys' fees) or damages (collectively, "Claims"), whether or not Provider may also be indemnified as to any such Claim by any other person, to the extent relating to or arising out of such Lessee's breach of this Agreement or any damage (other than ordinary wear and tear) to the Aircraft caused by Lessee, its employees or guests.

(b) In the event of loss, theft, confiscation, damage to or destruction of the Aircraft, or any engine or part thereof, from any cause whatsoever (a "Casualty Occurrence") occurring at any time when Lessee is using the Aircraft under this Agreement, Lessee shall furnish such information and execute such documents as may be necessary or required by Provider or applicable law. Lessee shall cooperate fully in any investigation of any claim or loss processed by Provider under the Aircraft insurance policy/policies and in seeking to compel the relevant insurance company or companies to pay any such claims.

(c) In the event of total loss or destruction of all or substantially all of the Aircraft, or damage to the Aircraft that causes it to be irreparable in the opinion of Provider or any insurance carrier providing hull coverage with respect to the Aircraft, or in the event of confiscation or seizure of the Aircraft, this Agreement shall automatically terminate; provided, however, that such termination of this Agreement shall not terminate the obligation of Lessee to cooperate with Provider in seeking to compel the relevant insurance company or companies to pay claims arising from such loss, destruction, damage, confiscation or seizure; provided, further, that the termination of this Agreement shall not affect the obligation of Lessee to pay Provider all accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder.

(d) For the sake of clarification, the Aircraft shall be deemed not available to Lessee after any Casualty Occurrence until such time thereafter as Provider has returned the Aircraft to service. Provider shall have no obligation to return the Aircraft to service after any Casualty Occurrence.

13. Representations, Warranties and Agreements of Lessee. Lessee represents, warrants and agrees as follows:

(a) *Authorization.* Lessee has all necessary powers to enter into the transactions contemplated in this Agreement and has taken all actions required to authorize and approve this Agreement.

(b) *Identification.* Lessee shall keep a legible copy of this Agreement in the Aircraft at all times when Lessee is using the Aircraft.

(c) *As-Is Condition:* Lessee acknowledge that Provider has not made any warranty or representation, either express or implied, as to the design, compliance with specifications, operation, or condition of, or as to the quality of the material, aircraft, or workmanship in, the Aircraft or any component thereof, and Provider makes no warranty of merchantability or fitness of the Aircraft or any component thereof for any particular purpose or as to title to the Aircraft or component thereof, or any other representation or warranty, express or implied, with respect to the Aircraft or component thereof.

14. Representations, Warranties and Agreements of Provider. Provider represents, warrants and agrees as follows:

(a) *Authorization.* Provider has all necessary powers to enter into the transaction contemplated in this Agreement and has taken all action necessary to authorize and approve this Agreement.

(b) *FAA Registration.* The Aircraft's registration with the FAA names Owner as the owner of the Aircraft.

15. Event of Default. The following shall constitute an Event of Default:

(a) Lessee shall not have made payment of any amount due under section 4 within ten (10) days after the same shall become due; or

(b) Lessee shall have failed to perform or observe (or cause to be performed or observed) any other covenant or agreement required to be performed under this Agreement, and such failure shall continue for twenty (20) days after written notice thereof from Provider to Lessee; or

(c) Lessee (i) becomes insolvent, (ii) fails to pay its debts when due, (iii) makes any assignment for the benefit of creditors, (iv) seeks relief under any bankruptcy law or similar law for the protection of debtors, (v) suffers a petition of bankruptcy filed against it that is not dismissed within thirty (30) days, or (vi) suffers a receiver or trustee to be appointed for itself or any of its assets, and such is not removed within thirty (30) days.

16. Provider's Remedies

(a) Upon the occurrence of any Event of Default, Provider may, at its option, exercise any or all remedies available at law or in equity, including, without limitation, any or all of the following remedies, as Provider in its sole discretion shall elect:

(i) By notice in writing, terminate this Agreement, whereupon all rights of Lessee to the use of the Aircraft or any part thereof shall absolutely cease and terminate, but Lessee shall remain liable as provided in this Agreement and Provider, at its option, may enter upon the premises where the Aircraft is located and take immediate possession of and remove the same by summary proceedings or otherwise. Lessee specifically authorizes Provider's entry upon any premises where the Aircraft may be located for the purpose of, and waives any cause of action it may have arising from, a peaceful retaking of the Aircraft. Lessee shall forthwith pay to Provider an amount equal to the total accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder, plus any and all losses and damages incurred or sustained by Provider by reason of any default by Lessee under this Agreement.

(b) Lessee shall be liable for all costs, charges and expenses, including reasonable attorneys' fees and disbursements, incurred by Provider by reason of the occurrence of any Event of Default or the exercise of Provider's remedies with respect thereto.

17. General Provisions

(a) *Headings.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the construction or interpretation of this Agreement.

(b) *Partial Invalidity.* If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be illegal, invalid, unenforceable or void, then such provision shall be enforced to the extent that it is not illegal, invalid, unenforceable or void, and the remainder of this Agreement, as well as such provision as applied to other persons, shall remain in full force and effect.

(c) *Waiver.* With regard to any power, remedy or right provided in this Agreement or otherwise available to any party, (i) no waiver or extension of time shall be effective unless expressly contained in a writing signed by the waiving party, (ii) no alteration, modification or impairment shall be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence, and (iii) waiver by any party of the time for performance of any act or condition hereunder does not constitute waiver of the act or condition itself.

(d) *Notices.* Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed duly given upon actual receipt, if delivered personally or by telecopy; or three (3) days following deposit in the United States mail, if deposited with postage pre-paid, return receipt requested, and addressed to such address as may be specified in writing by the relevant party from time to time, and which shall initially be as follows:

To Lessee at: Mr. Stephen A. Wynn  
Wynn Resorts, Limited  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

To Provider at: Las Vegas Jet, LLC  
Attention: Legal Department  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

No objection may be made to the manner of delivery of any notice or other communication in writing actually received by a party.

(e) *Nevada Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

(f) *Entire Agreement.* This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement and supersedes any prior or contemporaneous agreements, representations and understandings, whether written or oral, of or between the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, promises or undertakings, other than those expressly set forth or referred to herein.

(g) *Amendment.* This Agreement may be amended only by a written agreement signed by all of the parties.

(h) *Binding Effect; Assignment.* This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective successors and assigns; provided, however, that Lessee may not assign any of its rights under this Agreement, and any such purported assignment shall be null, void and of no effect.

(i) *Attorneys' Fees.* Should any action (including any proceedings in a bankruptcy court) be commenced between any of the parties to this Agreement or their representatives concerning any provision of this Agreement or the rights of any person or entity thereunder, solely as between the parties or their successors, the party or parties prevailing in such action as determined by the court shall be entitled to recover from the other party all of its costs and expenses incurred in connection with such action (including, without limitation, fees, disbursements and expenses of attorneys and costs of investigation).

(j) *Remedies Not Exclusive.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

(k) *No Third Party Rights.* Except as provided under Section 6(g), nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to this Agreement and their respective successors and assigns, *provided, however,* that Provider has consented and agreed that the Lease Agreement between Provider and World Travel, LLC, dated January 29, 2002, is subject to and subordinate to the Aircraft Security Agreement and that Provider's rights hereunder pursuant to the Aircraft Security Agreement to the Company and the rights of the Company have been assigned to the Collateral Agent on behalf of the Lenders and Lessee consents to such grant:

(l) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which independently shall be deemed to be an original, and all of which together shall constitute one instrument.

(m) *Expenses.* Each party shall bear all of its own expenses in connection with the negotiation, execution and delivery of this Agreement.

(n) *Broker/Finder Fees.* Each party represents that it has dealt with no broker or finder in connection with the transaction contemplated by this Agreement and that no broker or other person is entitled to any commission or finder's fee in connection therewith. Provider and Lessee each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

(o) *Relationship of the Parties.* Nothing contained in this Agreement shall in any way create any association, partnership, joint venture, or principal-and-agent relationship between the parties hereto or be construed to evidence the intention of the parties to constitute such.

(p) *Limitation of Damages.* Lessee waives any and all claims, rights and remedies against Provider, whether express or implied, or arising by operation of law or in equity, for any punitive, exemplary, indirect, incidental or consequential damages whatsoever.

(q) *Survival.* All representations, warranties, covenants and agreements, set forth in sections 4, 5, 6(a), 6(f), 9, 10, 12, 13, 14, 16, and 17 of this Agreement shall survive the expiration or termination of this Agreement.

#### 18. Truth-In-Leasing

(a) THE PARTIES HAVE REVIEWED THE AIRCRAFT'S MAINTENANCE RECORDS AND OPERATING LOGS AND HAVE FOUND THAT, DURING THE PRECEDING TWELVE MONTHS, THE AIRCRAFT HAS BEEN

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MAINTAINED AND INSPECTED UNDER PART 91 OF THE FEDERAL AVIATION REGULATIONS ("FAR"). LESSEE ACKNOWLEDGES THAT THE AIRCRAFT WILL BE MAINTAINED AND INSPECTED UNDER FAR PART 91 FOR OPERATIONS TO BE CONDUCTED UNDER THIS AGREEMENT.

(b) LESSEE ACKNOWLEDGES THAT PROVIDER IS RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT FOR FLIGHTS UNDER THIS AGREEMENT. PROVIDER AND LESSEE EACH CERTIFIES THAT IT UNDERSTANDS ITS RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

(c) LESSEE UNDERSTANDS THAT AN EXPLANATION OF FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

By: /s/ Marc Schorr /s/ Stephen A. Wynn  
Title: Chief Operating Officer

AMENDMENT NO. 1  
TO  
AIRCRAFT TIME SHARING AGREEMENT

THIS AMENDMENT NO 1 TO AIRCRAFT TIME SHARING AGREEMENT (the "Amendment No. 1") is made and entered into as of the 1<sup>st</sup> day of January, 2004, by and between Las Vegas Jet, LLC ("Provider"), and Stephen A. Wynn, an individual ("Lessee") and amend that certain Aircraft Time Sharing Agreement dated as of November 25, 2002 between Provider and Lessee.

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

**1. Defined Terms**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**2. Terms Remain the Same**

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

**3. Amendments**

a. Definition of the "Aircraft." The term "Aircraft" as defined in Section 1 of the Agreement is hereby amended to mean that certain aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW owned by Provider, and replacements thereof and any other aircraft purchased, lease or otherwise acquired by Provider during the Term of the Agreement.

b. Rent. Section 4 of the Agreement entitled "Rent" shall be amended in its entirety to the following:

**"4. Rent**

(a) Lessee shall pay to Provider, for Lessee and Lessee's Guests (if applicable) use of the Aircraft during the Term an amount (the "Rent") equal to the amount calculated using statutory method of Standard Industry Fare Level (Section 26 CFR 1.61-21), as may be amended from time to time. For purposes hereof, "Lessee's Guest" shall mean any person who travels on the Aircraft at the invitation of a Lessee. Rent shall be allocated to reimburse Provider for the following expenses incurred in connection with Lessee's use of the Aircraft (Rent is allocated to pay in full each of the expense items in the order listed below until the Rent payment is fully allocated, in the event the amount of Rent exceeds the amount of expenses listed below, such additional Rent shall be allocated pro rata among items (ii) through (vi)):

(i) twice the cost of the fuel, oil and other additives consumed;

- 
- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
  - (iii) all expenses for catering and in-flight entertainment materials;
  - (iv) all expenses for flight planning and weather contract services;
  - (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation;
- and
- (vi) all communications charges, including in-flight telephone.

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) In instances where Lessee or Lessee's guest are not on the Aircraft, there shall be no charge for flights to ferry the Aircraft to the delivery location specified by Lessee and flights to return the Aircraft to the Base or such other location as the parties agree."

**4. Entire Agreement.** This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

**5. Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

**6. Counterparts.** This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

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IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

Las Vegas Jet, LLC  
a Nevada limited liability Company

By: /s/ Marc Schorr  
Title: Chief Operating Officer

Stephen A. Wynn

/s/ Stephen A. Wynn

AMENDMENT NO. 2  
TO  
AIRCRAFT TIME SHARING AGREEMENT

THIS AMENDMENT NO. 2 TO AIRCRAFT TIME SHARING AGREEMENT (the "Amendment") is made and entered into as of the 31<sup>st</sup> day of October, 2009, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("Provider"), and Stephen A. Wynn, an individual ("Lessee") and amends that certain Aircraft Time Sharing Agreement, dated as of November 25, 2002, as amended by that certain Amendment No. 1 to Aircraft Time Sharing Agreement, dated January 1, 2004, by and between Provider and Lessee (collectively, the "Agreement").

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

**1. Defined Terms.**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**2. Terms Remain the Same.**

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

**3. Amendments.**

a. Definition of the "Aircraft." The term "Aircraft" as defined in Section 1 of the Agreement is hereby amended to mean any aircraft purchased, leased or otherwise acquired by Provider during the Term of the Agreement.

b. Definition of "Expiration Date." The Term "Expiration Date" as defined in Section 2 of the Agreement is hereby amended to mean the earliest of (i) October 30, 2014, (ii) termination of lessee's employment with Wynn Resorts, Limited or (iii) thirty (30) days notice of termination by either party to the other.

c. Section 4 of the Agreement is amended to add Section 4(d) which shall read as follows: "(d) Lessee and Provider agree Lessee shall not be obligated to deliver to Provider the Rent due hereunder; rather Rent shall be included as taxable compensation to Lessee."

**4. Entire Agreement.** This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

**5. Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

---

6. Counterparts. This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

LAS VEGAS JET, LLC

By: /s/ Marc D. Schorr

Name: Marc D. Schorr

Title: Chief Operating Officer

STEPHEN A. WYNN

/s/ Stephen A. Wynn

## AIRCRAFT TIME SHARING AGREEMENT

THIS AIRCRAFT TIME SHARING AGREEMENT (the "Agreement") is made and entered into as of this 26<sup>th</sup> day of November, 2002, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("Provider"), and Marc Schorr, an individual ("Lessee").

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Time Sharing of the Aircraft: Subject to the terms and conditions of this Agreement, Provider shall provide Lessee with transportation services on a non-exclusive basis using Provider's aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW (the "Aircraft"). This Agreement is intended to be a time sharing agreement within the meaning of 14 C.F.R. Section 91.501(c)(1).

2. Term. The term of this Agreement (the "Term") shall commence on the date hereof (the "Commencement Date") and end on the earlier October 30, 2009 or on thirty (30) days' notice of termination by either party to the other (the "Expiration Date")

3. Delivery to Lessee. Upon the request of Lessee, subject to the availability of the Aircraft as determined by Provider, Provider shall make the Aircraft available to Lessee at such location as Lessee may reasonably request. Lessee acknowledges that Provider currently bases the Aircraft at McCarran International Airport, Las Vegas, Nevada (the "Base").

4. Rent.

(a) Lessee shall pay to Provider, for Lessee's use of the Aircraft during the Term the following amounts (referred to collectively as "Rent") within 30 days of receipt of an invoice from Provider or its representative with respect to such use:

- (i) twice the cost of the fuel, oil and other additives consumed;
- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
- (iii) all expenses for catering and in-flight entertainment materials;
- (iv) all expenses for flight planning and weather contract services;
- (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation;
- (vi) all communications charges, including in-flight telephone.

and

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) For the sake of clarification, flights to ferry the Aircraft to the delivery location specified by Lessee pursuant to section 3, and flights to return the Aircraft to the Base or such other location as the parties agree pursuant to section 5, shall be deemed to be use of the Aircraft by Lessee.

5. Return to Base. On the earlier of the Expiration Date or the termination of this Agreement pursuant to section 16(a)(i) and, unless Provider agrees to the contrary, upon the conclusion of each flight of the Aircraft by Lessee under this Agreement, the Aircraft shall be returned to the Base or such other location as Provider and Lessee may agree.

6. Use of Aircraft.

(a) Lessee shall use the Aircraft only for the transportation of its employees and guests and shall not obtain compensation for such transportation from any person.

(b) Lessee shall not make the Aircraft available to a political candidate in connection with a political campaign by such candidate.

(c) Lessee shall not violate, and shall not permit any of its employees, agents or guests to violate, any applicable law, regulation or rule of the United States, and state, territory or local authority, or any foreign government or subdivision thereof, and shall not bring or cause to be brought or carried on board the Aircraft, or permit any employee, agent or guest to bring or cause to be brought or carried on board the Aircraft, any contraband or unlawful articles or substances, or anything that is contraband or is an unlawful article of substance in any jurisdiction into or over which the Aircraft is to operate on behalf of Lessee.

(d) Lessee shall, and shall cause its employees, agents and guests to, comply with all lawful instructions and procedures of Provider and its agents and employees regarding the Aircraft, its operation or flight safety.

(e) Lessee acknowledges that its discretion in determining the origin and destination of flights under this Agreement shall be subject to the following: (i) such origin and destination, and the routes to reach such origin and destination, are not within or over (A) an area of hostilities, (B) an area excluded from coverage under the insurance policies maintained by Provider with respect to the Aircraft or (C) a country or jurisdiction for which exports or transactions are subject to specific restrictions under any United States export or other law or United Nations Security Council Directive, including without limitation, the Trading With the Enemy Act, 50 U.S.C. App. Section 1 et seq.; the International Emergency Economic Powers Act, 50 U.S.C. App. Sections 1700 et seq. and the Export Administration Act, 50 U.S.C. App. Sections 2401 et seq.; (ii) the flights proposed by Lessee shall not cause (A) the Aircraft or any part thereof (1) to be used predominately outside of the United States within the meaning of the Section 168(g)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code"); and (2) to fail to be operated to and from the United States within the meaning of Section 168(g)(4)(A) of the Code; and (B) any item of income, gain, deduction, loss or credit with respect to the transactions contemplated by this Agreement to be treated as derived from, or allocable to, sources without the United States within the meaning of:

Section 862 of the Code: (iii) the proposed flights do not require the flight crew to exceed any flight or duty time limitations that Provider imposes upon its flight crews; and (iv) in the judgment of Provider, the safety of flight is not jeopardized.

(f) Lessee further acknowledges that, if, in the view of Provider (including, its pilot-in-command), flight safety may be jeopardized, Provider may terminate a flight or refuse to commence it without liability for loss, injury or damage occasioned by such termination or refusal. Lessee acknowledges that Provider shall not be liable for any loss, damage, cost or expense arising from any delay, cancellation or failure to furnish any transportation pursuant to this Agreement when caused by government regulation, law or authority, mechanical difficulty or breakdown, war, civil commotion, strikes or other labor disputes, weather conditions, acts of God, public enemies or any other cause beyond Provider's control.

(g) The parties hereby acknowledge and agree that:

(i) this Agreement is subject and subordinate to: (1) that lease Agreement between Provider and World Travel, LLC, dated January 29, 2002 (the "Master Lease"); (2) that certain Aircraft Security Agreement (the "Aircraft Security Agreement") made as of October 30, 2002, by Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 with and World Travel, LLC, a Nevada limited liability company as Trustor, and World Travel, LLC in favor of Wynn Las Vegas, LLC, a Nevada limited liability company (the "Company"); and (3) the rights of the company, (or its assignee) under the Aircraft Security Agreement, including, without limitation, the right of the Company to inspect and take the possession of the Aircraft from time to time;

(ii) after an Aircraft Event of Default (as defined in that certain Loan Agreement (the "Loan Agreement"), dated as of October 30, 2002, among the Company, Wells Fargo Bank Nevada, National Association, not in its individual capacity, except as expressly stated therein, but solely as collateral agent (the "Collateral Agent"), and the persons named on Schedule 1A thereto (the "Lenders") the Aircraft shall be surrendered by Provider at the election of the Company (or its assignee);

(iii) the parties hereby waive any right that they might have to any notice of the Company's (or its assignee's) intention to inspect, take possession of, or exercise any other right or remedy in respect of the Aircraft under the Aircraft Security Agreement;

(iv) the parties hereby waive, as against the Company, all rights to any set-off, defense, counterclaim, or cross-claim that they may hold against the Company; and

upon any Aircraft Event of Default (as defined in the Loan Agreement); neither party shall have any further rights in and to the Aircraft.

(h) The parties agree that the aggregate consideration paid for transportation services provided under the agreement will not at any time exceed \$5 million.

7. Pilots. For all flights of the Aircraft by Lessee pursuant to this Agreement, Provider shall cause the Aircraft to be operated by pilots who are duly qualified under the Federal Aviation Regulations, including without limitation, with respect to currency and type-rating, and who meet all other requirements established and specified by the insurance policies required hereunder.

8. Operation and Maintenance Responsibilities of Provider. Provider shall be in operational control of the Aircraft at all times during the Term. Provider shall be solely responsible for the operation and maintenance of the Aircraft.

9. Liens. Lessee shall not directly or indirectly create or incur any liens on or with respect to (i) the Aircraft or any part thereof, (ii) Owner's title thereto, (iii) any interest of Provider therein, (and Lessee will promptly, at its own expense, take such action as may be necessary to discharge any such lien), except (a) the respective rights of Provider and Lessee as herein provided and (b) liens created by or caused to be created by Owner or Provider.

10. Taxes.

(a) Except for any taxes on, or measured by, the net income of Provider imposed by the United States government or any state or local government or taxing authority in the United States, which shall be the sole responsibility of Provider, Lessee shall pay to and indemnify Provider and its employees and agents (collectively, the "Indemnitees") for, and hold each Indemnitee harmless from and against, on an after-tax basis, all other income, personal property, ad valorem, franchise, gross receipts, rental, sales, use, excise, value-added, leasing, leasing use, stamp, landing, airport use, or other taxes, levies, imposts, duties, charges, fees or withholdings of any nature, together with any penalties, fines, or interest thereon ("Taxes") arising out of the transactions between Provider and Lessee contemplated by this Agreement or Lessee's use of the Aircraft and imposed against any Indemnitee, Lessee, or the Aircraft, or any part thereof, by any federal or foreign government, any state, municipal or local subdivision, any agency or instrumentality thereof, or other taxing authority upon or with respect to the Aircraft, or any part thereof, or upon the ownership, delivery, leasing, possession, use, operation, return, transfer or release thereof, or upon the rentals, receipts or earnings arising therefrom. Lessee shall have the right to contest any Taxes attributable to Lessee; provided that (a) Lessee shall have given to Provider written notice of any such Taxes, which notice shall state that such Taxes are being contested by Lessee in good faith with due diligence and by appropriate proceedings and that Lessee has agreed to indemnify each Indemnitee against any cost, expense, liability or loss (including, without limitation, reasonable attorneys' fees) arising from or in connection with such contest; (b) in Provider's sole judgment, Provider has received adequate assurances of payment of such contested Taxes; and (c) counsel for Provider shall have determined that the nonpayment of any such Taxes or the contest of any such payment in such proceedings does not, in the sole opinion of such counsel, adversely affect the title, property or rights of Provider. In case any report or return is required to be made with respect to any Taxes attributable to Lessee, Lessee will either (after notice to Provider) make such report or return in such manner as will show the ownership of the Aircraft in Provider and send a copy of such report or return to Provider, or will notify Provider of such requirement and make such report or return in such manner as shall be satisfactory to Provider. Provider agrees to cooperate fully with Lessee in the preparation of any such report or return.

(b) Without limiting the generality of the foregoing, Lessee shall pay to Provider any federal excise taxes applicable to Lessee's use, or Lessee's payment for Lessee's use, of the Aircraft.

11. Insurance. Provider shall maintain in effect at its own expense throughout the Term, insurance policies containing such provisions and providing such coverages as Provider deems appropriate.

12. Loss or Damage

(a) Lessee shall indemnify, defend and hold harmless Provider and its officers, directors, agents and employees from and against any and all liabilities, claims (including, without limitation, claims involving or alleging Provider's negligence and claims involving strict or absolute liability in tort), demands, suits, causes of action, losses, penalties, fines, expenses (including, without limitation, attorneys' fees) or damages (collectively, "Claims"), whether or not Provider may also be indemnified as to any such Claim by any other person, to the extent relating to or arising out of such Lessee's breach of this Agreement or any damage (other than ordinary wear and tear) to the Aircraft caused by Lessee, its employees or guests.

(b) In the event of loss, theft, confiscation, damage to or destruction of the Aircraft, or any engine or part thereof, from any cause whatsoever (a "Casualty Occurrence") occurring at any time when Lessee is using the Aircraft under this Agreement, Lessee shall furnish such information and execute such documents as may be necessary or required by Provider or applicable law. Lessee shall cooperate fully in any investigation of any claim or loss processed by Provider under the Aircraft insurance policy/policies and in seeking to compel the relevant insurance company or companies to pay any such claims.

(c) In the event of total loss or destruction of all or substantially all of the Aircraft, or damage to the Aircraft that causes it to be irreparable in the opinion of Provider or any insurance carrier providing hull coverage with respect to the Aircraft, or in the event of confiscation or seizure of the Aircraft, this Agreement shall automatically terminate; provided, however, that such termination of this Agreement shall not terminate the obligation of Lessee to cooperate with Provider in seeking to compel the relevant insurance company or companies to pay claims arising from such loss, destruction, damage, confiscation or seizure; provided, further, that the termination of this Agreement shall not affect the obligation of Lessee to pay Provider all accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder.

(d) For the sake of clarification, the Aircraft shall be deemed not available to Lessee after any Casualty Occurrence until such time thereafter as Provider has returned the Aircraft to service. Provider shall have no obligation to return the Aircraft to service after any Casualty Occurrence.

13. Representations, Warranties and Agreements of Lessee. Lessee represents, warrants and agrees as follows:

(a) *Authorization.* Lessee has all necessary powers to enter into the transactions contemplated in this Agreement and has taken all actions required to authorize and approve this Agreement.

(b) *Identification.* Lessee shall keep a legible copy of this Agreement in the Aircraft at all times when Lessee is using the Aircraft.

(c) *As-Is Condition:* Lessee acknowledge that Provider has not made any warranty or representation, either express or implied, as to the design, compliance with specifications, operation, or condition of, or as to the quality of the material, aircraft, or workmanship in, the Aircraft or any component thereof, and Provider makes no warranty of merchantability or fitness of the Aircraft or any component thereof for any particular purpose or as to title to the Aircraft or component thereof, or any other representation or warranty, express or implied, with respect to the Aircraft or component thereof.

14. Representations, Warranties and Agreements of Provider. Provider represents, warrants and agrees as follows:

(a) *Authorization:* Provider has all necessary powers to enter into the transaction contemplated in this Agreement and has taken all action necessary to authorize and approve this Agreement.

(b) *FAA Registration.* The Aircraft's registration with the FAA names Owner as the owner of the Aircraft.

15. Event of Default. The following shall constitute an Event of Default:

(a) Lessee shall not have made payment of any amount due under section 4 within ten (10) days after the same shall become due; or

(b) Lessee shall have failed to perform or observe (or cause to be performed or observed) any other covenant or agreement required to be performed under this Agreement, and such failure shall continue for twenty (20) days after written notice thereof from Provider to Lessee; or

(c) Lessee (i) becomes insolvent, (ii) fails to pay its debts when due, (iii) makes any assignment for the benefit of creditors, (iv) seeks relief under any bankruptcy law or similar law for the protection of debtors, (v) suffers a petition of bankruptcy filed against it that is not dismissed within thirty (30) days; or (vi) suffers a receiver or trustee to be appointed for itself or any of its assets; and such is not removed within thirty (30) days.

## 16. Provider's Remedies

(a) Upon the occurrence of any Event of Default, Provider may, at its option, exercise any or all remedies available at law or in equity, including, without limitation, any or all of the following remedies, as Provider in its sole discretion shall elect:

(i) By notice in writing, terminate this Agreement, whereupon all rights of Lessee to the use of the Aircraft or any part thereof shall absolutely cease and terminate, but Lessee shall remain liable as provided in this Agreement and Provider, at its option, may enter upon the premises where the Aircraft is located and take immediate possession of and remove the same by summary proceedings or otherwise. Lessee specifically authorizes Provider's entry upon any premises where the Aircraft may be located for the purpose of, and waives any cause of action it may have arising from, a peaceful retaking of the Aircraft. Lessee shall forthwith pay to Provider an amount equal to the total accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder, plus any and all losses and damages incurred or sustained by Provider by reason of any default by Lessee under this Agreement.

(b) Lessee shall be liable for all costs, charges and expenses, including reasonable attorneys' fees and disbursements, incurred by Provider by reason of the occurrence of any Event of Default or the exercise of Provider's remedies with respect thereto.

## 17. General Provisions

(a) *Headings.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the construction or interpretation of this Agreement.

(b) *Partial Invalidity.* If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be illegal, invalid, unenforceable or void, then such provision shall be enforced to the extent that it is not illegal, invalid, unenforceable or void, and the remainder of this Agreement, as well as such provision as applied to other persons, shall remain in full force and effect.

(c) *Waiver.* With regard to any power, remedy, or right provided in this Agreement or otherwise available to any party, (i) no waiver or extension of time shall be effective unless expressly contained in a writing signed by the waiving party, (ii) no alteration, modification or impairment shall be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence, and (iii) waiver by any party of the time for performance of any act or condition hereunder does not constitute waiver of the act or condition itself.

(d) *Notices.* Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed duly given upon actual receipt, if delivered personally or by telecopy; or three (3) days following deposit in the United States mail, if deposited with postage pre-paid, return receipt requested, and addressed to such address as may be specified in writing by the relevant party from time to time, and which shall initially be as follows:

To Lessee at: Mr. Marc Schorr  
Wynn Resorts, Limited  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

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To Provider at: Las Vegas Jet, LLC  
Attention: Legal Department  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

No objection may be made to the manner of delivery of any notice or other communication in writing actually received by a party.

(e) *Nevada Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

(f) *Entire Agreement.* This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement and supersedes any prior or contemporaneous agreements, representations and understandings, whether written or oral, of or between the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, promises or undertakings, other than those expressly set forth or referred to herein.

(g) *Amendment.* This Agreement may be amended only by a written agreement signed by all of the parties.

(h) *Binding Effect; Assignment.* This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective successors and assigns; provided, however, that Lessee may not assign any of its rights under this Agreement, and any such purported assignment shall be null, void and of no effect.

(i) *Attorneys' Fees.* Should any action (including any proceedings in a bankruptcy court) be commenced between any of the parties to this Agreement or their representatives concerning any provision of this Agreement or the rights of any person or entity thereunder, solely as between the parties or their successors, the party or parties prevailing in such action as determined by the court shall be entitled to recover from the other party all of its costs and expenses incurred in connection with such action (including, without limitation, fees, disbursements and expenses of attorneys and costs of investigation).

(j) *Remedies Not Exclusive.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

(k) *No Third Party Rights.* Except as provided under Section 6(g), nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to this Agreement and their respective successors and assigns, *provided, however,* that Provider has consented and agreed that the Lease Agreement between Provider and World Travel, LLC, dated January 29, 2002, is subject to and subordinate to the Aircraft Security Agreement and that Provider's rights hereunder pursuant to the Aircraft Security Agreement to the Company and the rights of the Company have been assigned to the Collateral Agent on behalf of the Lenders and Lessee consents to such grant.

(l) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which independently shall be deemed to be an original, and all of which together shall constitute one instrument.

(m) *Expenses.* Each party shall bear all of its own expenses in connection with the negotiation, execution and delivery of this Agreement.

(n) *Broker/Finder Fees.* Each party represents that it has dealt with no broker or finder in connection with the transaction contemplated by this Agreement and that no broker or other person is entitled to any commission or finder's fee in connection therewith. Provider and Lessee each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

(o) *Relationship of the Parties.* Nothing contained in this Agreement shall in any way create any association, partnership, joint venture, or principal-and-agent relationship between the parties hereto or be construed to evidence the intention of the parties to constitute such.

(p) *Limitation of Damages.* Lessee waives any and all claims, rights and remedies against Provider, whether express or implied, or arising by operation of law or in equity, for any punitive, exemplary, indirect, incidental or consequential damages whatsoever.

(q) *Survival.* All representations, warranties, covenants and agreements, set forth in sections 4, 5, 6(a), 6(f), 9, 10, 12, 13, 14, 16, and 17 of this Agreement shall survive the expiration or termination of this Agreement.

#### 18. Truth-In-Leasing

(a) THE PARTIES HAVE REVIEWED THE AIRCRAFT'S MAINTENANCE RECORDS AND OPERATING LOGS AND HAVE FOUND THAT, DURING THE PRECEDING TWELVE MONTHS, THE AIRCRAFT HAS BEEN

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MAINTAINED AND INSPECTED UNDER PART 91 OF THE FEDERAL AVIATION REGULATIONS ("FAR"). LESSEE ACKNOWLEDGES THAT THE AIRCRAFT WILL BE MAINTAINED AND INSPECTED UNDER FAR PART 91 FOR OPERATIONS TO BE CONDUCTED UNDER THIS AGREEMENT.

(b) LESSEE ACKNOWLEDGES THAT PROVIDER IS RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT FOR FLIGHTS UNDER THIS AGREEMENT. PROVIDER AND LESSEE EACH CERTIFIES THAT IT UNDERSTANDS ITS RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

(c) LESSEE UNDERSTANDS THAT AN EXPLANATION OF FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

By: /s/ John Strzemp /s/ Marc Schorr  
Title: Executive Vice President & CFO

**AMENDMENT NO. 1  
TO  
AIRCRAFT TIME SHARING AGREEMENT**

THIS AMENDMENT NO 1 TO AIRCRAFT TIME SHARING AGREEMENT (the "Amendment No. 1") is made and entered into as of the 1<sup>st</sup> day of January, 2004, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("Provider"), and Marc Schorr, an individual ("Lessee") and amend that certain Aircraft Time Sharing Agreement dated as of November 25, 2002 between Provider and Lessee.

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

**1. Defined Terms**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**2. Terms Remain the Same**

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

**3. Amendments**

a. Definition of the "Aircraft." The term "Aircraft" as defined in Section 1 of the Agreement is hereby amended to mean that certain aircraft identified as a Bombardier Inc. model BD-700-1A10; serial number 9065; registration number N711SW owned by Provider, and replacements thereof and any other aircraft purchased, lease or otherwise acquired by Provider during the Term of the Agreement.

b. Rent. Section 4 of the Agreement entitled "Rent" shall be amended in its entirety to the following:

**"4. Rent**

(a) Lessee shall pay to Provider, for Lessee and Lessee's Guests (if applicable) use of the Aircraft during the Term an amount (the "Rent") equal to the amount calculated using statutory method of Standard Industry Fare Level (Section 26 CFR 1.61-21), as may be amended from time to time. For purposes hereof, "Lessee's Guest" shall mean any person who travels on the Aircraft at the invitation of a Lessee. Rent shall be collected from Lessee not later than 30 days from the date of receipt of an invoice from Provider or its representative. Rent shall be allocated to reimburse Provider for the following expenses incurred in connection with Lessee's use of the Aircraft (Rent is allocated to pay in full each of the expense items in the order listed below until the Rent payment is fully allocated, in the event the amount of Rent exceeds the amount of expenses listed below, such additional Rent shall be allocated pro rata among items (ii) through (vi)):

(i) twice the cost of the fuel, oil and other additives consumed;

- 
- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
  - (iii) all expenses for catering and in-flight entertainment materials;
  - (iv) all expenses for flight planning and weather contract services;
  - (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation;
- and
- (vi) all communications charges, including in-flight telephone.

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) In instances where Lessee or Lessee's guest are not on the Aircraft, there shall be no charge for flights to ferry the Aircraft to the delivery location specified by Lessee and flights to return the Aircraft to the Base or such other location as the parties agree."

**4. Entire Agreement.** This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

**5. Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

**6. Counterparts.** This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

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IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

Las Vegas Jet, LLC  
a Nevada limited liability Company

By: /s/ Stephen A. Wynn  
Title: CEO & President

**Marc Schorr**

/s/ Marc Schorr

**AMENDMENT NO. 2  
TO  
AIRCRAFT TIME SHARING AGREEMENT**

THIS AMENDMENT NO. 2 TO AIRCRAFT TIME SHARING AGREEMENT (the "Amendment") is made and entered into as of the 31<sup>st</sup> day of October, 2009, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("Provider"), and Marc Schorr, an individual ("Lessee") and amends that certain Aircraft Time Sharing Agreement, dated as of November 26, 2002, as amended by that certain Amendment No. 1 to Aircraft Time Sharing Agreement, dated January 1, 2004, by and between Provider and Lessee (collectively, the "Agreement").

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

**1. Defined Terms.**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**2. Terms Remain the Same.**

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

**3. Amendments.**

a. Definition of the "Aircraft." The term "Aircraft" as defined in Section 1 of the Agreement is hereby amended to mean any aircraft purchased, leased or otherwise acquired by Provider during the Term of the Agreement.

b. Definition of "Expiration Date." The Term "Expiration Date" as defined in Section 2 of the Agreement is hereby amended to mean the earliest of (i) October 30, 2014, (ii) termination of Lessee's employment with Wynn Resorts, Limited or (iii) thirty (30) days notice of termination by either party to the other.

c. Section 4 of the Agreement is amended to add Section 4(d) which shall read as follows: "(d) Lessee and Provider agree Lessee shall not be obligated to deliver to Provider the Rent due hereunder; rather Rent shall be included as taxable compensation to Lessee."

**4. Entire Agreement.** This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

**5. Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

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6. Counterparts. This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

LAS VEGAS JET, LLC

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn

Title: Chief Executive Officer & President

MARC SCHORR

/s/ Marc Schorr

## SUBSIDIARIES OF WYNN RESORTS, LIMITED:

Rambas Marketing Co., LLC  
     Wynn International Marketing, LLC (an Isle of Man limited liability company)  
 Toasty, LLC (a Delaware limited liability company)  
     B/W Clothiers, LLC (a 50% owned joint venture)  
 Valvino Lamore, LLC  
 Wynn Gallery, LLC  
 World Travel G-IV, LLC  
 Chamber Associates, LLC  
 WLV Entertainment, LLC  
 Wynn Aircraft, LLC  
 Development Associates, LLC  
 Worldwide Wynn, LLC  
 Wynn Design & Development, LLC  
 Wynn Resorts Hotel Marketing & Sales (Asia), LLC  
 Wynn Group Asia, Inc.  
     WM Cayman Holdings Limited I (a Cayman Islands company)  
         Wynn Macau, Limited (a Cayman Islands company)  
             WM Cayman Holdings Limited II (a Cayman Islands company)  
                 Wynn Resorts International, Ltd. (an Isle of Man company)  
                     Wynn Resorts (Macau) Holdings, Ltd. (an Isle of Man company)  
                         Wynn Resorts (Macau), Ltd. (a Hong Kong Limited company)  
                             Wynn Resorts (Macau), S.A. (a Macau SA company)  
                                 Palo Real Estate Company Ltd. (a Macau SA company)  
 Wynn Macau Development Company, LLC  
     Wynn Cotai Holding Company, Ltd. (an Isle of Man corporation)  
     Cotai Partner, Ltd. (an Isle of Man company)  
         Cotai Land Development Company (a Macau SA company)  
 Wynn IOM Holdco I, Ltd. (an Isle of Man company)  
     Wynn IOM Holdco II, Ltd. (an Isle of Man company)  
     Wynn Manpower, Limited (a Macau limited company)  
     SH Hotelaria Limitada (a Macau limited company)  
 Wynn Resorts Funding, LLC  
 Wynn Resorts Holdings, LLC  
     Wynn Las Vegas, LLC  
         Las Vegas Jet, LLC  
         World Travel, LLC  
         Wynn Completion Guarantor, LLC  
         Wynn Golf, LLC  
         Wynn Las Vegas Capital Corp.  
         Wynn Show Performers, LLC  
         Wynn Sunrise, LLC  
         Kevyn, LLC  
             PW automotive, LLC (a Delaware Limited Liability Company and 50% owned joint venture)

All subsidiaries are formed in the State of Nevada and wholly-owned unless otherwise specifically identified.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-100891 on Form S-8, Registration Statement No. 333-114022 on Form S-3 and Registration Statement No. 333-146360 on Form S-3 of our reports dated February 26, 2010 with respect to the consolidated financial statements and schedules of Wynn Resorts, Limited and the effectiveness of internal control over financial reporting of Wynn Resorts, Limited, included in this Annual Report on Form 10-K for the year ended December 31, 2009.

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

**Certification of the Chief Executive Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

Stephen A. Wynn, certify that:

1. I have reviewed this Annual Report on Form 10-K of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(c) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

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/s/ Stephen A. Wynn  
 Stephen A. Wynn  
 Chairman of the Board and  
 Chief Executive Officer  
 (Principal Executive Officer)

**Certification of the Chief Financial Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

Matt Maddox, certify that:

1. I have reviewed this Annual Report on Form 10-K of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2010

/s/ Matt Maddox

Matt Maddox  
Chief Financial Officer and Treasurer  
(Principal Financial Officer)

**Certification of CEO and CFO Pursuant to  
18 U.S.C. Section 1350, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of Wynn Resorts, Limited (the "Company") for the year ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company, and Matt Maddox, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

*/s/ Stephen A. Wynn*

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Name: Stephen A. Wynn  
Title: Chairman and Chief Executive Officer  
(Principal Executive Officer)  
Date: February 26, 2010

*/s/ Matt Maddox*

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Name: Matt Maddox  
Title: Chief Financial Officer and Treasurer  
(Principal Financial Officer)  
Date: February 26, 2010

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Wynn Resorts, Limited and will be retained by Wynn Resorts, Limited and furnished to the Securities and Exchange Commission or its staff upon request.