

Dep. Ex. 658

Published CUSIP Number: 34460YAA5
EXECUTION

CREDIT AGREEMENT

Dated as of June 6, 2007

among

FONTAINEBLEAU LAS VEGAS, LLC and
FONTAINEBLEAU LAS VEGAS II, LLC,
as Borrowers

The Lenders referred to herein

and

BANK OF AMERICA, N.A.,
as Administrative Agent, Issuing Lender and Swing Line Lender

BANC OF AMERICA SECURITIES LLC,
DEUTSCHE BANK TRUST COMPANY AMERICAS,
BARCLAYS BANK PLC

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
as Joint Lead Arrangers and Joint Book Managers

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Syndication Agent

BARCLAYS BANK PLC

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
as Documentation Agents

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EXHIBIT	658
WIT:	Naval
DATE:	4-1-11
A. MANCUSO	

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EXHIBITS:

A	Form of Assignment and Assumption
B	Form of Compliance Certificate
C	[Reserved]
D	Form of Lender Addendum
E	Form of Notice of Borrowing
F-1	Form of Project Lender Intercreditor Agreement
F-2	Form of Retail Intercreditor Agreement
G-1	Form of Conversion Term Note
G-2	Form of Delay Draw Term Note
G-3	Form of Initial Term Note
G-4	Form of Revolving Note
G-5	Form of Swing Line Note
H	Form of Exemption Certificate
I	Form of Insurance Certificate
J	Joint Borrower Provisions
K	Form of Condo Sales Agreement

This CREDIT AGREEMENT is entered into as of June 6, 2007 among FONTAINEBLEAU LAS VEGAS, LLC, a Nevada limited liability company, and FONTAINEBLEAU LAS VEGAS II, LLC, a Florida limited liability company (collectively, the "Borrowers"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Issuing Lender and Swing Line Lender. BANC OF AMERICA SECURITIES LLC, DEUTSCHE BANK TRUST COMPANY AMERICAS, BARCLAYS BANK PLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED have served as Joint Lead Arrangers and Joint Book Managers for the credit facilities described herein (collectively, the "Arrangers"). DEUTSCHE BANK TRUST COMPANY AMERICAS has served as Syndication Agent for the credit facilities described herein. BARCLAYS BANK PLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED have served as Documentation Agents for the credit facilities described herein.

RECITALS

A. Borrowers propose to develop, construct and operate the Fontainebleau Resort and Casino on the Site. The Retail Affiliate will initially lease the Retail Air Space Parcels and will contribute the financing of certain aspects of the Project using the proceeds of the Retail Facility.

B. Pursuant to the Disbursement Agreement, the proceeds of the Second Mortgage Notes, the loans under the Retail Facility, the Loans under this facility, and other funds available to the Project Entities for the construction of the Project will be disbursed.

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1, provided that to the extent not so listed, each term used in this Agreement shall be used with the meaning set forth for that term in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness:

"Access Road" means a proposed access road serving the Site and the Wet 'n Wild Property.

"Account" means any "Commodity Account," "Deposit Account" or "Securities Account" (as such terms are defined in the UCC) with respect to which the Secured Parties have a perfected first priority Lien (subject only to Permitted Liens) securing the Obligations of the Companies pursuant to a Control Agreement.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent Fee Letter" means the letter agreement of even date herewith among Borrowers and the Administrative Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.2, or such other address or account as the Administrative Agent may from time to time notify to Borrowers and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate Agreements" means, collectively, the agreements set forth on Schedule 4.29, each as amended, restated, extended, supplemented or otherwise modified in accordance with the provisions hereof.

"Affiliate Lease" means that certain Lease dated as of June 6, 2007 between the Retail Affiliate, as lessor, and Fontainebleau Las Vegas, LLC, as lessee.

"Aggregate Exposure" means with respect to any Lender at any time, the sum of (i) the amount of such Lender's Delay Draw Commitment then in effect or, if the Delay Draw Commitments have been terminated, the amount of such Lender's Delay Draw Term Loans then outstanding, (ii) the amount of such Lender's Initial Term Loans then outstanding, (iii) the amount of such Lender's Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender's Revolving Extensions of Credit then outstanding and (iv) the amount of such Lender's Conversion Term Loans then outstanding.

"Aggregate Exposure Percentage" means with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

"Agreement" means this Credit Agreement, as amended, supplemented, replaced or otherwise modified from time to time.

"Allocated Overhead Expense" means 75% of all expenses of Parent and its Subsidiaries, determined in accordance with GAAP consistently applied, less (a) any expense directly paid by or chargeable to a Subsidiary of Parent or for which Parent obtains reimbursement from one of its Subsidiaries (other than pursuant to Section 6 of the Parent Reimbursement Agreement), (ii) without duplication, any expense which is otherwise reimbursed under the Parent Reimbursement Agreement (other than pursuant to Section 6 thereof), and (iii) any expense in the nature of depreciation, amortization or other similar non-cash charges.

"Amortization Date" means the last day of each March, June, September and December.

"Applicable Facility Lenders" means with respect to each Facility, Non-

Defaulting Lenders holding more than 33 1/3% of the Obligations outstanding under such Facility (or, prior to any termination of the Delay Draw Commitments or the Revolving Commitments, as the case may be, Non-Defaulting Lenders holding more than 33 1/3% of the Total Delay Draw Commitments (less the aggregate Delay Draw Commitments of Defaulting Lenders) or Total Revolving Commitments (less the aggregate Revolving Commitments of Defaulting Lenders), as the case may be).

"Applicable Margin" means,

- (a) in respect of each Term Loan which is a Eurodollar Loan, 3.25% per annum plus any then applicable Condo Sales Performance Adjustment;
- (b) in respect of each Term Loan which is a Base Rate Loan, 2.00% per annum plus any then applicable Condo Sales Performance Adjustment; and
- (c) in respect of each Revolving Loan, Conversion Term Loan, Swing Line Loan and Letter of Credit:

- (i) for all periods prior to the commencement of the Initial Pricing Period:

- (A) in respect of each such Loan which is a Eurodollar Loan and in respect of each Letter of Credit, 3.25% per annum plus any then applicable Condo Sales Performance Adjustment; and

- (B) in respect of each such Loan which is a Base Rate Loan, 2.00% per annum plus any then applicable Condo Sales Performance Adjustment.

- (ii) thereafter, during each Pricing Period, the rates per annum set forth below opposite the Total Leverage Ratio as of the last day of the Fiscal Quarter ending two months prior to the first day of that Pricing Period, provided that (A) if a Compliance Certificate is not delivered prior to the first day of any Pricing Period, then Pricing Level IV shall apply until the required Compliance Certificate is delivered, and (B) each of the rates set forth below shall be increased by any then applicable Condo Sales Performance Adjustment:

Pricing Level	Total Leverage Ratio	Eurodollar Loans	Base Rate Loans	Letter of Credit Fees
I	Less than 5.00:1.00	2.50%	1.25%	2.50%
II	Greater than or equal to 5.00:1.00, but less than 5.50:1.00	2.75%	1.50%	2.75%
III	Greater than or equal to 5.50:1.00, but less than 6.00:1.00	3.00%	1.75%	3.00%
IV	Greater than or equal to 6.00:1.00	3.25%	2.00%	3.25%

provided further that, notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Margin for any period shall be subject to the provisions of Section 2.15(c).

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrangers" as defined in the preamble hereto.

"Asset Sale" means any Disposition of Property or series of related Dispositions of Property by the Companies of the types described in Section 7.5(e) for a consideration in excess of \$250,000.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6(b), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

"Available Delay Draw Commitments" means, as to any Delay Draw Lender at any time, the excess, if any, of (a) such Delay Draw Lender's Delay Draw Commitment then in effect over (b) such Delay Draw Lender's Delay Draw Term Loans then outstanding.

"Available Revolving Commitment" means as to any Revolving Lender at any time, the excess, if any, of (a) such Revolving Lender's Revolving Commitment then in effect over (b) such Revolving Lender's Revolving Extensions of Credit then outstanding; provided, that in calculating the Revolving Commitment Fee, the aggregate principal amount of Swing Line Loans then outstanding shall be deemed to be zero.

"Bank of America" means Bank of America, N.A. and its successors.

"Base Rate" means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate." The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loans" means Loans for which the applicable rate of interest is based upon the Base Rate.

"Beneficial Owner" as defined in Rule 13d-3 and Rule 13d-5 under the Securities Exchange Act of 1934, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The term "Beneficially Owned" has a corresponding meaning.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" means (i) with respect to a corporation, the board of directors of the corporation; (ii) with respect to a partnership, the board of directors of the general partner of the partnership; and (iii) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrowers" as defined in the preamble hereto.

"Borrowing Date" means any Banking Day specified by Borrowers as a date on which Borrowers request the relevant Lenders to make Loans hereunder.

"Capital Expenditures" means, for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment which should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries; provided, that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall not include (a) the Net Cash Proceeds received by any such Person from Dispositions of Property pursuant to Section 7.5 and applied to the acquisition of fixed or capital assets and (b) the Loss Proceeds received by any such Person for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with Section 2.22.

"Capital Lease Obligations" means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Cash Collateral" means cash or deposit account balances in respect of which the Administrative Agent has been granted a perfected Lien to secure the Obligations.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Lender or any Affiliate thereof, or any Person that was a Lender or an affiliate thereof on the date of the execution of any Cash Management Agreement, in its capacity as a party to a Specified Cash Management Agreement.

"Change of Control" means an event or series of events by which:

(a) Either of Borrowers fail to be wholly-owned, directly or indirectly, by Parent and by Resorts Properties I;

(b) The Jeffrey Soffer Parties fail to directly or indirectly own, beneficially and of record, and control the power to vote, at least 35% of the Equity Interests in Parent having ordinary voting power in the election of directors or managers (unless a Qualified Offering of such interests has occurred, in which case, the required percentage shall be reduced to 20%); or

(c) Schaeffer fails to be the Chief Executive Officer of Parent or fails to exercise all of the material prerogatives associated with such office (except in respect of disability lasting not more than 90 days), unless a successor reasonably acceptable to the Required Lenders is appointed within 120 days or, following the Completion of the Project, 180 days; or

(d) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of a greater percentage of the Equity Interests of Parent having ordinary voting power for the election of the board of directors, managers or their equivalent of Parent on a fully-diluted basis (and taking into account all such securities that such "person" or "group" has the right to acquire pursuant to any option right) than the Jeffrey Soffer Parties; or

(e) Parent shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in Las Vegas Holdings; or

(f) Las Vegas Holdings shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in Borrowers and the other Companies.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all Property of the Companies now owned or hereafter

acquired, upon which a Lien is purported to be created by any Security Document.

"Commitment" means as to any Lender, the sum of the Initial Term Commitment, the Delay Draw Commitment and the Revolving Commitment of such Lender.

"Committed Condo Sales Proceeds" means, as of the last day of each calendar month, the aggregate retail sales price for all Condo Units for which Borrowers have entered into Executed Condo Sales Agreements as of that date, *provided* that (a) until Borrowers first deliver a Condo Sales Report, the Committed Condo Sales Proceeds shall be deemed to be zero, and (b) the amount of any such sales in respect of which Borrowers are aware of any monetary default by the purchaser, or as to which the purchaser has repudiated its obligations in writing, shall be excluded.

"Companies" means Las Vegas Holdings and its Subsidiaries.

"Company Excess Cash Flow Percentage" means, for any period, the difference between 100% and the Lender Excess Cash Flow Percentage for such period.

"Completion Guaranty Reimbursement Obligations" means all obligations of the Companies to make any reimbursement, indemnity or similar payment to the issuer of any Completion Guaranty pursuant to Section 3(a) of the Credit Enhancement Fee Agreement, including without limitation any reimbursement obligations by reason of drawings made under any Completion Guaranty.

"Compliance Certificate" means a certificate duly executed by a Responsible Officer of the Companies substantially in the form of Exhibit B hereto.

"Condo Closing Agent" means Nevada Title Company, or another independent servicer or closing agent for Condo Unit sales which is reasonably acceptable to the Administrative Agent.

"Condo Sales Performance Adjustment" means:

(a) Prior to the Initial Condo Sales Performance Adjustment Period, 0% per annum;

(b) During the Initial Condo Sales Performance Adjustment Period and each subsequent Condo Sales Performance Adjustment Period or portion thereof prior to the Condo Sales Performance Final Adjustment Date, the rate per annum set forth in the matrix below opposite the ratio of Committed Condo Sales Proceeds to Targeted Committed Condo Sales Proceeds (determined for each Condo Sales Performance Adjustment Period as of the last day of the Fiscal Quarter immediately preceding the commencement thereof):

Ratio of Committed Condo Sales Proceeds to Targeted Committed Condo Sales Proceeds	Condo Sales Performance Adjustment
0.85:1.00 or greater	0%
Less than 0.85:1.00 but greater than or equal to 0.70:1.00	0.25%
Less than 0.70:1.00 but greater than or equal to 0.65:1.00	0.50%
Less than 0.65:1.00	0.75%

provided, that, notwithstanding the foregoing provisions of this clause (b), if a Condo Sales Report is not delivered within three Banking Days prior to an upcoming Condo Sales Performance Adjustment Period, then the Condo Sales Performance Adjustment for the upcoming Condo Sales Performance Adjustment Period shall be calculated on the basis of the Committed Condo Sales Proceeds delivered in the most recent Condo Sales Report until the required Condo Sales Report is delivered; and

(c) From and after the Condo Sales Performance Final Adjustment Date, the rate per annum set forth in the matrix below opposite the ratio of Total Net Condo Sales Proceeds (determined as of the last day of the calendar month which is twelve full calendar months following the Opening Date) to \$702,000,000:

Total Net Condo Sales Proceeds to \$702,000,000	Final Condo Sales Performance Adjustment
0.85:1.00 or greater	0%
Less than 0.85:1.00 but greater than or equal to 0.70:1.00	0.25%
Less than 0.70:1.00 but greater than or equal to 0.65:1.00	0.50%
Less than 0.65:1.00	0.75%

"Condo Sales Performance Adjustment Period" means, in respect of each Fiscal Quarter (commencing with the Fiscal Quarter ending March 31, 2009), the three month period beginning one month following the last day of that Fiscal Quarter.

"Condo Sales Performance Final Adjustment Date" means the last day of the calendar month which is thirteen full calendar months following the Opening Date.

"Condo Sales Report" means a monthly report executed by a Responsible Officer of Borrowers detailing cumulative Condo Unit sales and, to the extent delivered with respect to the last month of any Fiscal Quarter, the ratio of Committed Condo Sales Proceeds to Targeted Committed Condo Sales Proceeds and otherwise in form and

substance reasonably acceptable to the Administrative Agent.

"Condo Unit Release Price" means the "Minimum Release Price" set forth for each Condo Unit on Schedule 6.14.

"Confidential Information Memorandum" means the Confidential Offering Memorandum, dated March, 2007 and furnished to the initial Lenders.

"Consolidated Current Assets" means, at any date, all amounts (other than any amount contained in the Accounts established by the Disbursement Agreement and other cash and Cash Equivalents) which would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of Las Vegas Holdings and its Subsidiaries at such date.

"Consolidated Current Liabilities" means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of Las Vegas Holdings and its Subsidiaries at such date, but excluding (a) the current portion of the Funded Debt, and (b) without duplication of clause (a) above, all Indebtedness consisting of Revolving Loans, Conversion Term Loan, or Swing Line Loans to the extent otherwise included therein.

"Consolidated First Lien Debt" means at any date, the sum as of that date of (a) the aggregate outstanding principal amount of the Indebtedness under this Agreement plus (b) the aggregate principal amount of any outstanding Indebtedness of the type described in Section 7.2(c).

"Consolidated Interest Expense" means for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of Las Vegas Holdings and its Subsidiaries for such period with respect to outstanding Indebtedness (including, without limitation, all commissions, discounts and other fees and charges with respect to letters of credit and bankers' acceptance financing and net costs under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"Consolidated Lease Expense" means for any period, the aggregate amount of fixed and contingent rentals payable by Las Vegas Holdings and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, for such period with respect to leases of real and personal property.

"Consolidated Member" means a corporation, other than the common parent, that is a member of an affiliated group (as defined in Section 1504 of the Code) of which any of the Companies is a member.

"Consolidated Net Income" means for any period, the consolidated net income (or loss) of Las Vegas Holdings and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; excluding (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of Las Vegas Holdings or

is merged into or consolidated with Las Vegas Holdings or any of its Subsidiaries, and (b) the income (or deficit) of any Person which is not a Subsidiary of Las Vegas Holdings but in which Las Vegas Holdings has a direct or indirect ownership interest, except to the extent that any such income is actually received by Las Vegas Holdings and its Subsidiaries in the form of dividends or similar distributions.

"Consolidated Total Debt" means at any date, the aggregate principal amount of all Indebtedness of Las Vegas Holdings and its Subsidiaries at such date, of the types described in clauses (a) through (f) of the definition of "Indebtedness" determined on a consolidated basis in accordance with GAAP, but excluding (i) any Indebtedness of the types described in Section 7.2(f) and 7.2(j), and (ii) any Indebtedness of the type described in clause (f) of the definition of "Indebtedness" to the extent not required by GAAP to be quantified on the balance sheet of Las Vegas Holdings and its Subsidiaries as of such date (as opposed to merely being a footnote thereto).

"Consolidated Working Capital" means at any date, the excess of Consolidated Current Assets on such date over Consolidated Current Liabilities on such date.

"Construction Consultant" means Inspection & Valuation International, Inc. or such other construction consultant of recognized national standing appointed by the Administrative Agent.

"Construction Fees" means the "Contractor's Fee" (as defined in the Prime Construction Agreement) payable by the Companies to the General Contractor pursuant to the Prime Construction Agreement.

"Contractual Obligation" means as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

"Control Agreements" means any control agreement executed in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Obligations, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement, including each such "Control Agreement" described in the Disbursement Agreement granting such a Lien.

"Controlled Account" means a deposit, brokerage or other similar account subject to a Control Agreement.

"Controlled Group Member" means an entity, whether or not incorporated, which is under common control with any Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under Section 414 of the Code.

"Conversion Date" means the date selected by Borrowers which is not later than six full calendar months following the date upon which the aggregate outstanding principal balance of the Revolving Loans (exclusive of L/C Obligations) first

equals or exceeds \$200,000,000. In the absence of a written election by Borrowers, the Conversion Date shall be the date which is six months following the date upon which the aggregate outstanding principal balance of the Revolving Loans (exclusive of L/C Obligations) first equals or exceeds \$200,000,000 (or, if not a Banking Day, the next Banking Day).

"Conversion Term Lender" means each Lender that is the holder of Conversion Term Loans.

"Conversion Term Loan Percentage" means as to any Conversion Term Lender at any time, the percentage which the aggregate principal amount of such Lender's Conversion Term Loans then outstanding constitutes of the aggregate principal amount of the Conversion Term Loans then outstanding.

"Conversion Term Loans" means any term loans resulting from conversion of Revolving Loans pursuant to Section 2.3.

"Conversion Term Notes" as defined in Section 2.7(e).

"Credit Enhancement Fee Agreement" means the Credit Enhancement Fee Agreement of even date herewith, among the Companies and Turnberry Residential, as at any time amended.

"Credit Enhancement Fees" means any "Credit Enhancement Fee" (as defined in the Credit Enhancement Fee Agreement) payable pursuant to the Credit Enhancement Fee Agreement.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Deed of Trust" means the Deed of Trust, Assignment of Rents and Security Agreement dated as of the Closing Date executed and delivered by Borrowers in respect of the Retained Site, either as originally executed or as it may from time to time be supplemented, modified, amended, extended or supplanted.

"Default" means any of the events specified in Section 8, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Defaulting Lender" means at any time, (i) any Lender with respect to which a Lender Default is in effect, (ii) any Lender that is the subject (as a debtor) of any action or proceeding (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking

appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, (iii) any Lender that shall make a general assignment for the benefit of its creditors or (iv) any Lender that shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

"Delay Draw Commitment" means as to any Delay Draw Lender, the obligation of such Lender, if any, to make a Delay Draw Term Loan to Borrowers hereunder in a principal amount not to exceed the amount set forth under the heading "Delay Draw Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

"Delay Draw Commitment Fee Rate" means 2.00% per annum.

"Delay Draw Commitment Period" means the period from and including the Closing Date to the earlier of (a) the second anniversary of the Closing Date, or (b) the Term Loan Termination Date.

"Delay Draw Lender" means each Lender that has a Delay Draw Commitment or is the holder of a Delay Draw Term Loan.

"Delay Draw Term Loan Percentage" means as to any Delay Draw Lender at any time, the percentage which such Lender's Delay Draw Commitment then constitutes of the aggregate Delay Draw Commitments (or, at any time after the Delay Draw Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Delay Draw Term Loans then outstanding constitutes of the aggregate principal amount of the Delay Draw Term Loans then outstanding).

"Delay Draw Term Loans" as defined in Section 2.1(b).

"Delay Draw Term Notes" as defined in Section 2.7(c).

"Derivatives Counterparty" as defined in Section 7.6.

"Designated Equity Contributions" means cash contributions to the equity capital of the Companies made following the Closing Date for the purpose of:

- (a) financing Equity Financed Capital Expenditures;
- (b) financing a shortfall in EBITDA;
- (c) providing funds in accordance with Sections 3.8 or 3.9 of the Disbursement Agreement;

provided that (i) no such contribution shall be deemed to finance more than one of these purposes, and (ii) the Companies may not make more than two such designations to

finance a shortfall in EBITDA during the term of this Agreement. No contribution to the Companies shall be deemed a Designated Equity Contribution unless, within ten Banking Days following their receipt thereof, the Companies deliver a certificate to the Administrative Agent detailing the amount and source of the contribution and identifying which of the purposes set forth above is being financed (and if the amount thereof is to be used to finance Equity Financed Capital Expenditures, identifying the Capital Expenditures to be so financed).

"Direct Funding Account" means a Controlled Account with the Administrative Agent into which Direct Loans (including Swing Line Loans) will be funded.

"Direct Loans" has the meaning set forth in Section 2.1.

"Disbursement Agent" means Bank of America, in its capacity as Disbursement Agent under the Disbursement Agreement, and any successor in such capacity.

"Disbursement Agreement" means the Master Disbursement Agreement dated as of the date hereof among Borrowers, Fontainebleau Las Vegas Holdings, LLC, Fontainebleau Las Vegas Capital Corp., Fontainebleau Las Vegas Retail, LLC, the Administrative Agent, Wells Fargo Bank, N.A., as the Trustee, Lehman Brothers Holdings Inc., as the Retail Agent and Bank of America, as the Disbursement Agent.

"Disbursement Agreement Loans" has the meaning set forth in Section 2.1.

"Disbursement Agreement Event of Default" means an "Event of Default" as defined in the Disbursement Agreement.

"Disposition" means with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, grant of restriction, transfer or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Stock" means any Equity Interests or other ownership or profit interest of Las Vegas Holdings that it is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect of in consideration other than Equity Interests (other than Disqualified Stock).

"Documentation Agents" means, collectively, Barclays Bank plc and Merrill Lynch Capital.

"EBITDA" means for any period, Consolidated Net Income for such period plus, without duplication and to the extent deducted in calculating such Consolidated Net Income, the sum of:

- (a) income tax expense or the Tax Amount (whether or not paid during

such period):

(b) Consolidated Interest Expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness;

(c) depreciation and amortization expense;

(d) amortization of intangibles (including goodwill);

(e) any extraordinary expenses or losses;

(f) pre-opening expenses related to the opening of the Project to the extent not in excess of those contemplated by the Resort Budget;

(g) the aggregate net non-cash loss on the Disposition of Property other than Condo Units by the Companies (other than sales of inventory in the ordinary course of business);

(h) any cash or non cash expense relating to or loss resulting from the development, marketing or Disposition of Condo Units;

(i) Subordinated Affiliate Expenses;

(j) other non-cash items reducing such Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period);

(k) Designated Equity Contributions received during that period (to the extent designated by Borrowers on a timely basis in accordance with the definition thereof as an addition to EBITDA); and

minus, to the extent included in the calculation of such Consolidated Net Income, the sum of:

(l) interest income;

(m) any extraordinary income or gains;

(n) the aggregate net non-cash gain on the Disposition of Property other than Condo Units by the Companies (other than sales of inventory in the ordinary course of business);

(o) cash or non cash gain resulting from the Disposition of Condo Units;
and

(p) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal

of an accrual or reserve for potential cash item in any prior period).

"Equity Financed Capital Expenditures" means any Capital Expenditures which are made using the proceeds of Designated Equity Contributions made not earlier than 90 days prior to the date upon which such Capital Expenditures are made or committed to be made by the Companies, provided that (a) within ten Banking Days following the receipt by the Companies of such contributions, the Companies shall provide the Administrative Agent with notice thereof, and describe the proposed Capital Expenditures, (b) no such Capital Expenditure shall result in a change to the Resort Budget or Combined Costs which is not permitted by the Disbursement Agreement, or result in a Scope Change which is not permitted by the Disbursement Agreement, and (c) no such Capital Expenditures shall be made which result in any material disruption of the Project.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

"Eurocurrency Reserve Requirements" means, for any day as applied to a Eurodollar Loan, the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto or otherwise required by applicable law) applicable to any member bank of the Federal Reserve System in respect of eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"Eurodollar Loans" means Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"Eurodollar Rate" means for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to the British Bankers Association LIBOR Rate ("**BBA LIBOR**"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 A.M. (London time) two Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "Eurodollar Rate" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 A.M. (London time) two Banking Days prior to the commencement of such Interest Period.

"Eurodollar Tranche" means the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and

end on the same later date (whether or not such Loans shall originally have been made on the same day).

"Event of Default" means any of the events specified in Section 8, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Excess Cash Flow" means, for each Excess Cash Flow Period, the amount calculated as follows:

- (i) EBITDA; plus
- (ii) interest income; plus
- (iii) any decrease in Consolidated Working Capital (or minus any increase thereto); plus
- (iv) any increase (or minus any decrease), if any, in the deferred tax account of the Companies; minus
- (v) Consolidated Interest Expense; minus
- (vi) to the extent paid in cash, debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness; minus
- (viii) to the extent paid in cash, any extraordinary expenses or losses (or plus to the extent paid in cash, any extraordinary income or gains); minus
- (ix) to the extent paid in cash, pre-opening expenses related to the opening of the Project to the extent not in excess of those contemplated in the Resort Budget; minus
- (x) Designated Equity Contributions to the extent included in arriving at EBITDA; minus
- (xi) income tax expense or the Tax Amount (to the extent paid in cash during such period); minus
- (xii) Capital Expenditures other than Project Costs and Equity Financed Capital Expenditures made in cash; minus
- (xiii) Any scheduled amortization and mandatory prepayment of Funded Debt during such Excess Cash Flow Period (other than any prepayments required pursuant to Section 2.11(a)(ii) by reason of Dispositions of Condo Units or pursuant to Section 2.11(a)(vi) by reason of Excess Cash Flow for any prior period); minus
- (xiv) the aggregate amount of any proceeds of Asset Sales which are

subject to a Reinvestment Notice that are applied to the payment of Capital Expenditures during such Excess Cash Flow Period to the extent such proceeds are included in arriving at EBITDA for that Excess Cash Flow Period; minus

(xv) Without duplication as to (xiii), any prepayment of the Revolving Loans and Swing Line Loans during such Excess Cash Flow Period to the extent accompanied by a corresponding permanent reduction in the amount of the Revolving Commitments and all optional prepayments of Term Loans and Conversion Term Loans;

provided that the conversion of Revolving Loans to Conversion Term Loans shall not reduce Excess Cash Flow.

"Excess Cash Flow Period" means (a) the period beginning on the first day of the Fiscal Quarter commencing on or following the Opening Date and ending on the first June 30 or December 31 which is at least six full calendar months following the Opening Date, and (b) each subsequent period of six months ending on each June 30 and December 31 thereafter.

"Excess Cash Flow Recapture" as defined in Section 2.11(b)(v).

"Excluded Assets" (i) the Second Mortgage Proceeds Account, (ii) any assets the acquisition of which was financed by Indebtedness permitted by Section 7.2(e), to the extent that the terms of such Indebtedness prohibit additional Liens on such assets (but only to the extent and so long as so prohibited), (iii) any license, permit or authorization issued by any of the Nevada Gaming Authorities or any other Governmental Authority, (iv) any contracts, contract rights, permits, licenses, authorizations, instruments, general intangibles or any other Collateral, which by their terms, the terms of any documents, agreements, instruments, permits, licenses, or authorizations relating thereto, or the operation of law (including any Nevada Gaming Laws or other applicable law) may not be assigned or pledged, or in which a security interest may not be created or for which any consent for assignment or creation of a security interest therein is required and has not been obtained or which would be breached or terminated (or permits any Person to exercise a remedy thereunder) by virtue of a security interest being granted (other than to the extent that any such prohibition or consent requirement would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC) or which would require a finding of suitability or other similar approval or procedure by any of the Nevada Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security; provided, however, that the security interest shall attach immediately at such time as the restriction prohibiting assignment shall be removed or any condition thereto shall be satisfied or such required finding of suitability or other approval has been obtained, (v) any water rights, to the extent that the requisite approvals from the Nevada Public Utility Commission for the granting of security interests therein have not been obtained; (vi) insofar as perfection of Liens granted by the Security Documents is concerned, Vehicles (as defined in the Guarantee and Collateral Agreement), (vii) any United States intent-to-use trademark or service mark application to the extent that, and solely during the period in which, the grant of a security interest therein would impair the

validity or enforceability of such intent-to-use trademark or service mark applications under federal law (after such period, such interest in such trademark or service mark applications will become part of the Collateral); (viii) any Collateral released from the Lien of the Administrative Agent securing the Obligations as permitted by the terms of each of the Loan Documents; (ix) any deposits or cash subject to Liens described in Sections 7.3 (f), (g), (o) or (p); and (x) any mandatory gaming security reserves or other reserves required under applicable Nevada Gaming Laws or by directive of any of the Nevada Gaming Authorities which may not be pledged or in which a security interest may not be granted under Nevada Gaming Laws.

"Executed Condo Sales Agreements" means executed sales agreements entered into with respect of Condo Units which are substantially in the form of Exhibit K, or otherwise with such changes thereto as may be approved by the Administrative Agent.

"Facility" means, as the context requires, (a) the Initial Term Loans and funded Delay Draw Term Loans, (b) the unfunded portion of the Delay Draw Commitments, (c) the Revolving Commitments and the extensions of credit made thereunder, which shall include, without limitation, L/C Obligations (the "Revolving Credit Facility"), and (d) any Conversion Term Loans then outstanding.

"Facility Fee Letter" means the letter agreement dated as of March 2, 2007 among Parent and Bank of America, Banc of America Securities LLC, Deutsche Bank Trust Company Americas, Barclays Bank plc, Barclays Capital Real Estate Inc., Merrill Lynch Mortgage Capital Inc., Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., Merrill Lynch Capital Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"Federal Funds Rate" means for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Banking Day next succeeding such day; provided that (a) if such day is not a Banking Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Banking Day as so published on the next succeeding Banking Day, and (b) if no such rate is so published on such next succeeding Banking Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"Financing Agreements" means, collectively, this Agreement and the other Loan Documents, the Second Mortgage Notes, the Second Mortgage Indenture and the Second Mortgage Upstream Guarantees.

"First Lien Leverage Ratio" means as of each date of determination, the ratio of (a) Consolidated First Lien Debt as of that date to (b) EBITDA for the twelve month period ending on that date, provided that in the case of the first three full Fiscal

Quarters following the Opening Date, EBITDA shall be annualized on a straight line basis for the period consisting of each of the full Fiscal Quarters beginning after the Opening Date (without regard to any partial prior Fiscal Quarters).

"First Test Date" means the last day of the first Fiscal Quarter which ends six months or more following the Opening Date.

"Fiscal Quarter" means each fiscal quarter of Las Vegas Holdings and its Subsidiaries ending on each March 31, June 30, September 30 and December 31.

"Fiscal Year" means the fiscal year of Las Vegas Holdings and its Subsidiaries ending on December 31 of each calendar year.

"Fixed Charge Coverage Ratio" means for any period, the ratio of (a) EBITDA for the twelve month period ending on that date to (b) Fixed Charges for such period, provided that in the case of the first three full Fiscal Quarters following the Opening Date, both the numerator and the denominator of this ratio will be determined for each of the full Fiscal Quarters beginning following the Opening Date (without regard to any prior Fiscal Quarters).

"Fixed Charges" means, for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, (b) scheduled payments made during such period on account of principal of Indebtedness of Las Vegas Holdings and its Subsidiaries, (c) provision for cash income taxes made by Las Vegas Holdings and its Subsidiaries on a consolidated basis in respect of such period and the payment of any Tax Amount during such period, (d) Maintenance Capital Expenditures for such period, and (e) Consolidated Lease Expense for such period.

"Fontainebleau Materials" as defined in Section 6.2.

"Former Lender" as defined in Section 10.13(a).

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"Funded Debt" means as of each date of determination, the consolidated obligations of Las Vegas Holdings and its Subsidiaries in respect of Indebtedness of the types described in clauses (a) through (e) of the definition of "Indebtedness" as of that date.

"Funds Costs" means any reimbursement of costs and expenses or payment of interest under clauses (ii) and (iii) of Section 3 of the Credit Enhancement Fee Agreement.

"Governing Documents" means (a) with respect to any corporation, collectively, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with

respect to any limited liability company, collectively, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, collectively, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Guarantee and Collateral Agreement" means the Guarantee and Collateral Agreement dated as of Closing Date executed by the Companies in favor of the Administrative Agent and the Lenders, either as originally executed, or as it may from time to time be supplemented, modified, amended, restated or extended.

"Guarantee Obligation" means as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof or (v) under Hedge Agreements; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by Borrowers in good faith.

"Guarantees" means, collectively (a) the Parent Guaranty (until released in accordance with its terms), (b) the Resort Properties I Guaranty, (c) the Guarantee and Collateral Agreement and (d) each other continuing guarantee of the Obligations hereafter made in favor of the Administrative Agent and the Lenders.

"Guarantors" means, collectively, Parent, Resort Properties I, Las Vegas

Holdings and each Subsidiary of Las Vegas Holdings (other than Borrowers) that executes and delivers a guaranty or guaranty supplement pursuant to Section 6.10 (in each case until their respective Guarantees are terminated or released in accordance with the Loan Documents).

"Hedge Agreements" means all interest rate swaps, caps or collar agreements or similar arrangements entered into by Companies providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"Hedge Bank" means any Lender or Specified Hedge Affiliate in its capacity as a party to a Specified Hedge Agreement.

"Honor Date" as defined in Section 3.3(a).

"Indebtedness" means of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations or Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities, (g) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) for the purposes of Section 8(e) only, all obligations of such Person in respect of Hedge Agreements.

"Indemnitee" as defined in Section 10.5.

"Initial Arrangers" means, collectively, Bank of America, N.A., Deutsche Bank Trust Company Americas, Barclays Capital Real Estate Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated, each in its capacity as a joint lead arranger.

"Initial Condo Sales Performance Adjustment Period" means the Condo Sales Performance Adjustment Period commencing on May 1, 2009.

"Initial Pricing Period" means the period of three calendar months beginning on the first March 1, June 1, September 1 or December 1 immediately

following the First Test Date.

"Initial Term Commitment" means as to any Initial Term Lender, the obligation of such Initial Term Lender to make an Initial Term Loan to Borrowers hereunder on the Closing Date in a principal amount not to exceed the amount set forth under the heading "Initial Term Commitment" opposite such Initial Term Lender's name on Schedule I to the Lender Addendum delivered by such Initial Term Lender. The aggregate principal amount of Initial Term Commitments on the Closing Date is \$700,000,000.

"Initial Term Lender" means each Lender that has an Initial Term Commitment or is the holder of an Initial Term Loan.

"Initial Term Loans" as defined in Section 2.1(a).

"Initial Term Notes" as defined in Section 2.7(e).

"Insolvency" means with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent" means pertaining to a condition of Insolvency.

"Insurance Advisor" means Insurance Advisors, LLC, or its successor, appointed by the Administrative Agent.

"Insurance Requirements" means all material terms of any insurance policy required pursuant to this Agreement or any Security Document and all material regulations and then current standards applicable to or affecting the Site or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Site, or any other body exercising similar functions, *provided* that (i) any such coverages in respect of the Retail Air Space Parcels may be maintained by the Retail Affiliate to the extent that such coverages are reasonably acceptable to the Administrative Agent, and (ii) the Insurance Requirements shall not, from and after the Completion Date, be deemed to apply to portions of the Site that are not included in the Retained Site.

"Intellectual Property" means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Intellectual Property Collateral" means all Intellectual Property of the Companies, now owned or hereafter acquired, upon which a Lien is purported to be created by the Security Documents.

"Intellectual Property License Agreement" means the License Agreement dated as of the Closing Date between Parent, Resort Properties II and Borrowers, pursuant to which Borrowers are granted a license to use the "Fontainebleau" federal trademark and related present and future intellectual property in connection with the Project.

"Intellectual Property Security Agreement" means any Intellectual Property Security Agreement to be executed and delivered by any Company, substantially in the form of Exhibits A-1 and A-2 to the Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Interest Payment Date" means (a) as to any Base Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Loan (other than any Revolving Loan that is a Base Rate Loan (unless all Revolving Loans are being repaid in full in immediately available funds and the Revolving Commitments terminated) and any Swing Line Loan), the date of any repayment or prepayment made in respect thereof.

"Interest Period" means as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by Borrowers in its Advance Request, Notice of Borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the day after the last day of the then current Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by Borrowers by irrevocable notice to the Administrative Agent not less than three Banking Days prior to the last day of the then current Interest Period with respect thereto; provided, that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Banking Day;

(ii) no Interest Period in respect of any Revolving Loans or any Conversion Term Loans may extend beyond the Revolving Termination Date and no Interest Period in respect of Term Loans may extend beyond the Term Loan Termination Date;

(iii) any Interest Period that begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the

calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month; and

(iv) Borrowers shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Loan.

"Investments" as defined in Section 7.8.

"ISP" means with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Issuing Lender and any Borrower (or any Subsidiary thereof) or in favor of the Issuing Lender and relating to such Letter of Credit.

"Issuing Lender" means Bank of America and any other Revolving Lender which at the request of Borrowers and with the consent of the Administrative Agent agrees to issue Letters of Credit. As of the Closing Date, the sole Issuing Lender shall be Bank of America.

"Jeffrey Soffer Parties" means, collectively, Jeffrey Soffer and:

(a) any 80% (or more) owned Subsidiary, heir, estate, lineal descendant or immediate family member, as defined in Rule 404(a) of SEC Regulation S-K as in effect on the date of this Agreement of Jeffrey Soffer; and

(b) any trust, corporation, partnership or other entity, the beneficiaries, equity owners, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Jeffrey Soffer and/or such other Persons referred to in (a).

"Las Vegas Holdings" means Fontainebleau Las Vegas Holdings, LLC, a Nevada limited liability company.

"LC Advance" means with respect to each Revolving Lender, such Lender's funding of its participation in any LC Borrowing in accordance with its applicable Revolving Credit Percentage.

"LC Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Loan.

"LC Commitment" means \$100,000,000.

"LC Commitment Period" means the period from and including the Closing Date to the date that is 30 days prior to the Revolving Termination Date.

"LC Credit Extension" means with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"LC Obligations" means at any time, the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit (calculated in accordance with Section 1.3), (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 3.3, and (c) the aggregate amount of L/C Borrowings.

"Lender Addendum" means with respect to any initial Lender, a Lender Addendum, substantially in the form of Exhibit D hereto, to be executed and delivered by such Lender on the Closing Date as provided in Section 10.18.

"Lender Default" means the failure or refusal (which has not been retracted in writing) of a Lender to make available (i) its portion of any Loan required to be made by such Lender hereunder, (ii) its portion of any unreimbursed payment required to be made by such Lender under Section 3.4, (iii) its portion of any participating interest required to be purchased by such Lender pursuant to Section 2.6(c) or (iv) any amount required to be paid and/or reimbursed by such Lender to the Administrative Agent or any other Lender hereunder or under any other Loan Document, in each case at or prior to such time that the same is required to be so made, reimbursed or purchased by such Lender.

"Lender Excess Cash Flow Percentage" means, for any Excess Cash Flow Period, the percentage set forth below opposite the Total Leverage Ratio determined as of the last day of that period:

Total Leverage Ratio	Lender Excess Cash Flow Percentage
Less than 4.00:1.00	0%
Greater than or equal to 4.00:1.00, but less than 5.00:1.00	50%
Greater than or equal to 5.00:1.00, but less than 6.00:1.00	75%
Greater than or equal to 6.00:1.00	100%

"Lenders" as defined in the preamble hereto and includes the Conversion Term Lenders, the Issuing Lender and the Swing Line Lender.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the

Issuing Lender.

"Letters of Credit" means each letter of credit issued pursuant to Section 3.1.

"License Revocation" means the revocation, failure to renew or suspension of, or the appointment of a receiver or similar official with respect to, any casino, gambling or gaming license, including, without limitation, any Nevada Gaming Approvals, covering any portion of the Project.

"Lien" means with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in such Property and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"Loan" means any loan made by any Lender pursuant to this Agreement.

"Loan Documents" means, collectively, this Agreement, the Notes, the Guarantees, the Completion Guaranties, the Affiliate Subordination Agreement, the Security Documents, the Consents, the Disbursement Agreement, the Intercreditor Agreements, the Administrative Agent Fee Letter, each Issuer Document, each Specified Hedge Agreement, each Compliance Certificate, and any other instruments, documents or agreements of any type or nature hereafter executed and delivered by the Loan Parties to the Administrative Agent or to any Lender in any way relating to or in furtherance of this Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified, amended, restated, extended or supplanted, *provided* that the Specified Hedge Agreements shall not be considered to be Loan Documents for the purposes of Sections 8(b), 8(d) or 8(i) and that the Specified Cash Management Agreements shall not be considered to be Loan Documents. The Loan Documents in any event include the instruments, documents and agreements listed on Schedule 1.1.

"Loan Parties" means, collectively, the Companies, each Completion Guarantor and each Guarantor (including any Subsidiaries thereof that become party to a Loan Document pursuant to Section 6.10) *provided* that following the release of any Completion Guaranty, the Parent Guaranty or any other Guarantee in accordance with its terms, Turnberry Residential (or any other issuer of a released Completion Guaranty) or Parent or any other Person party to such Guarantee as the case may be, shall no longer be considered to be "Loan Parties." For the avoidance of doubt the Retail Affiliate is not a Loan Party.

"Loss Proceeds" means all amounts and proceeds (including instruments) in respect of any Event of Loss, including proceeds of any insurance policy required to be maintained by the Companies under this Agreement or any other Loan Document.

"Maintenance Capital Expenditures" means Capital Expenditures, other

than for Project Costs, for the maintenance, repair, restoration or refurbishment of the Project, but excluding any such Capital Expenditure which adds to, improves or expands the Project.

"Majority Initial Arrangers" means, at any time, those of the Initial Arrangers which, either directly or through Affiliates, hold the majority in interest of the aggregate Obligations in respect of Loans, Letters of Credit and Swing Line Loans held as of that date by all of the Initial Arrangers and their respective Affiliates, as a whole, for this purpose treating the undrawn Revolving Commitments and Delay Draw Commitments as outstanding Obligations.

"Managers" means, collectively, Banc of America Securities LLC, Deutsche Bank Trust Company Americas, Barclays Capital Real Estate Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated, each in its capacity as a joint book manager.

"Material Adverse Effect" means any event or circumstance which:

- (a) has a material adverse effect on the business, assets, properties, liabilities (actual or contingent), operations or condition (financial or otherwise) of the Companies, taken as a whole;
- (b) materially and adversely affects the ability of the Companies, taken as a whole, to perform their respective obligations under the Loan Documents; or
- (c) materially and adversely affects the rights of the Secured Parties under their respective Loan Documents, including the validity, enforceability or priority of the Liens purported to be created under the Security Documents.

"Material Affiliate Agreement" means any Material Agreement to which a Company, on the one hand, and an Affiliate of such Company, on the other hand, are parties. The Intellectual Property License Agreement shall be deemed a Material Affiliate Agreement for purposes of this Agreement and the other Loan Documents.

"Material Agreement" means any contract or agreement to which any of the Companies is a party (a) pursuant to which the Companies are reasonably expected to incur obligations or liabilities with a dollar value in excess of \$25,000,000 during the term of such contract or agreement, or (b) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect, taking into account any viable replacements or substitutions therefore at the time such determination is made.

"Multiemployer Plan" means a Plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

"Net Cash Proceeds" means:

- (a) in respect of any Asset Sale, the proceeds thereof in the form of

cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of reasonable attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document or relating to the Second Mortgage Indenture) and other reasonable fees and expenses, in each case, to the extent actually incurred in connection with such Asset Sale and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable), purchase price adjustments reasonably expected to be payable and reserves or other set asides against liabilities, in each case as a result thereof;

(b) in connection with each sale of a Condo Unit, the gross cash proceeds received by the Companies upon the date of transfer of that Condo Unit to the purchaser, plus (i) the amount of any deposits made by the purchaser of that Condo Unit which have not previously been remitted to the Condo Proceeds Account as Bonded Condo Proceeds, and minus (ii) any closing costs and other amounts payable in respect of the sale of that Condo Unit on such date of transfer including amounts payable on that date pursuant to the Turnberry Marketing and Sales Agreement;

(c) in connection with any issuance or sale of Equity Interests, debt securities or instruments or the incurrence of loans (including Subordinated Debt), the cash proceeds received from such issuance or incurrence, net of reasonable attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other reasonable fees and expenses, in each case, to the extent actually incurred by the Companies in connection therewith.

"Nevada Gaming Approvals" means with respect to any action by a particular Person, any consent, approval or other authorization required for such action by such Person from a Nevada Gaming Authority or under Nevada Gaming Laws.

"Non-Defaulting Lender" means any Lender other than a Defaulting Lender.

"Non-Excluded Taxes" as defined in Section 2.18(a).

"Non-U.S. Lender" as defined in Section 2.18(f).

"Notes" means the collective reference to the Revolving Notes, the Conversion Term Notes, the Initial Term Notes, the Delay Draw Term Notes, and the Swing Line Notes, if any, evidencing Loans.

"Notice of Borrowing" means a certificate duly executed by a Responsible Officer of Borrowers substantially in the form of Exhibit E hereto.

"Obligations" means the unpaid principal of and interest on (including

interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Loan Parties to the Administrative Agent, to any Arranger, to any Manager or to any Lender (or, in the case of Specified Hedge Agreements and Specified Cash Management Agreement, any Specified Hedge Affiliate or Specified Cash Management Affiliate, as applicable), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Specified Hedge Agreement, any Specified Cash Management Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent, to any Arranger, to any Manager or to any Lender that are required to be paid by any Loan Party pursuant hereto or to any other Loan Document) or otherwise; provided, that (i) Obligations of Borrowers under any Specified Hedge Agreement or Specified Cash Management Agreement shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Hedge Agreements or Specified Cash Management Agreements.

"On-Site Cash" means amounts held in cash at the Site following the substantial completion of the Project in connection with and necessary for the ordinary course operations of the Project by the Companies.

"Parent Guaranty" means the Guaranty dated as of the Closing Date executed by Parent in favor of the Administrative Agent and the Lenders, either as originally executed, or as it may from time to time be supplemented, modified, amended, restated or extended.

"Parent Guaranty Release Date" means the date following the Completion Date upon which the conditions set forth in Section 5.15(b) of the Parent Guaranty have been satisfied.

"Parent Reimbursement Agreement" means the Reimbursement Agreement dated as of June 6, 2007 to be effective January 1, 2007, by and among Parent, Las Vegas Holdings and Borrowers, as in effect as of the Closing Date.

"Participant" as defined in Section 10.6(d).

"Pass Through Entity" means (a) a grantor trust for federal or state income tax purposes or (b) an entity treated as a partnership or a disregarded entity for federal or state income tax purposes.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Permits" means the collective reference to (i) Environmental Permits, and (ii) any and all other franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Requirement of Law.

"Permitted Businesses" means (i) the gaming business on the Site and other adjacent real property subject to the Deed of Trust, (ii) the development, construction, ownership and operation of the Project, (iii) all businesses, whether or not licensed by the Nevada Gaming Authorities, which are necessary for, incident to, useful to, arising out of, supportive of or connected to the development, construction, ownership or operation of the Project, (iv) any development, construction or operation of lodging, retail, restaurant or convention facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services, parking services, sales and marketing services or other activities related to the foregoing, (v) any business that is a reasonable extension, development or expansion of any of the foregoing or incidental thereto and/or (vi) the ownership by a Person of Equity Interests in its directly Wholly Owned Subsidiaries to the extent engaged solely in the businesses described above.

"Permitted Liens" means Liens permitted by Section 7.3.

"Permitted Refinancing Indebtedness" means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund any existing Indebtedness; provided, that (i) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith), (ii) such Permitted Refinancing Indebtedness has a final maturity date not earlier than the final maturity date of, and no payments due prior to the maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iii) the restrictions on the Companies contained in the agreements governing such Permitted Refinancing Indebtedness are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iv) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loan Documents, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loan Documents on terms at least as favorable to the Lenders as those contained in the applicable documents reflecting such subordination (whether the Intercreditor Agreements or otherwise), and (v) the relevant holders of such Permitted Refinancing Indebtedness become party to the Intercreditor Agreements, as applicable. In the event Permitted Refinancing Indebtedness is used to extend, refinance, renew, replace, amend and restate, defease or refund the Second Mortgage Notes, all relevant definitions and provisions of the Loan Documents related to the Indebtedness being

extended, refinanced, renewed, replaced, defeased or refunded shall be amended, as necessary, to reflect such Permitted Refinancing Indebtedness and related documentation and/or arrangements by action of the Administrative Agent without the consent of the Lenders.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Plan" means at a particular time, any employee benefit plan that is subject to the requirements of Section 412 of the Code or that is a Single Employer Plan and which any of the Companies or any Controlled Group Member maintains, administers, contributes to or is required to contribute to or under which any of the Companies or any Controlled Group Member could incur any liability.

"Platform" as defined in Section 6.2(j).

"Pledged Stock" as defined in the Guarantee and Collateral Agreement.

"Presumed Tax Liability" means for any Person that is not a Pass Through Entity for any period, the product of (a) the Taxable Income allocated or attributable to such Person (directly or through one or more tiers of Pass Through Entities) (net of taxable losses allocated to such Person with respect to any Company) that (i) are, or were previously, deductible by such Person and (ii) have not previously reduced Taxable Income), and (b) the Presumed Tax Rate.

"Presumed Tax Rate" means with respect to any Person for any period means the highest effective combined Federal, state and local income tax rate applicable during such period to a corporation organized under the laws of the State of Nevada, taxable at the highest marginal Federal income tax rate and the highest marginal Nevada and Las Vegas income tax rates (after giving effect to the Federal income tax deduction for such state and local income taxes, taking into account the effects of the alternative minimum tax, such effects being calculated on the assumption that such Person's only taxable income is the income allocated or attributable to such Person for such period (directly or through one or more tiers of Pass Through Entities) with respect to its equity interest in any of the Companies that is a Pass Through Entity.) In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (e.g., ordinary income or long term capital gain) shall be taken into account.

"Pricing Period" means the Initial Pricing Period and each subsequent period of three calendar months beginning on each March 1, June 1, September 1 and December 1.

"Proceedings" as defined in Section 6.7(c).

"Project Lender Intercreditor Agreement" means the Intercreditor Agreement, as of the Closing Date among the Administrative Agent and the Trustee, in the form of Exhibit F-1 hereto.

"Project Revenues" means all cash income and receipts of the Companies.

"Projections" as defined in Section 6.2(c).

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

"Public Lender" as defined in Section 6.2(j).

"Qualified Offering": a public offering of the Equity Interests in Parent or any Person that owns 100% of Parent yielding not less than \$250,000,000 in gross proceeds to Parent or such other Person.

"Reciprocal Easement" means the reciprocal easements granted pursuant to the Reciprocal Easement Agreement.

"Refunded Swing Line Loans" as defined in Section 2.6(b).

"Refunding Date" as defined in Section 2.6(c).

"Register" as defined in Section 10.6(c).

"Regulation D", "Regulation H", "Regulation T", "Regulation U" and "Regulation X" means Regulations D, H, T, U and X, respectively, of the Board as in effect from time to time (and any successor to all or a portion thereof).

"Reimbursement Obligation" means the obligation of Borrowers to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit.

"Reinvestment Notice" means a written notice executed by a Responsible Officer of Borrowers and delivered to the Administrative Agent within 30 days after an Asset Sale, stating that no Default or Event of Default has occurred and is continuing and that Companies intend and expect to use all or a specified portion of the Net Cash Proceeds of such Asset Sale to acquire assets useful in a Permitted Business.

"Related Parties" means with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Reorganization" means with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Repair Plan" as defined in Section 2.22(c)(iv).

"Reportable Event" means any of the events set forth in Section 4043(c) of

ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. Section 4043.

"Required Facility Lenders" means with respect to any Facility at any time, Non-Defaulting Lenders holding more than 50% of the Obligations outstanding under such Facility (or, prior to any termination of the Delay Draw Commitments or the Revolving Commitments, as the case may be, Non-Defaulting Lenders holding more than 50% of the Total Delay Draw Commitments (less the aggregate Delay Draw Commitments of Defaulting Lenders) or Total Revolving Commitments (less the aggregate Revolving Commitments of Defaulting Lenders), as the case may be).

"Required Hedge Agreement" means one or more Hedge Agreements having an initial tenor of not less than three years and at any time fixing (in a manner which is reasonably acceptable to the Administrative Agent) the interest rate in respect of a notional amount of Indebtedness equal to 75% (or, on and after December 31, 2009, 50%) of the anticipated maximum outstanding principal balance of the Loans at such time (as reasonably determined by the Companies as of the date of initial effectiveness of the Required Hedge Agreement).

"Required Lenders" means at any time, Non-Defaulting Lenders holding more than 50% of the sum of the outstanding Obligations (for this purpose, treating the Delay Draw Commitments and Revolving Commitments of any Non-Defaulting Lenders as being outstanding).

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

"Resort Properties I Guaranty" means the Continuing Guaranty dated as of the Closing Date executed by Resort Properties I in favor of the Administrative Agent and the Lenders, either as originally executed, or as it may from time to time be supplemented, modified, amended, restated or extended.

"Restricted Payments" as defined in Section 7.6.

"Retail Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Closing Date among the Administrative Agent, the Trustee, the Retail Agent and the Retail Affiliate, in the form of Exhibit F-2 hereto.

"Retail Leasing Report" means a monthly report executed by a Responsible Officer of Borrowers detailing leasing activities in respect of the Retail Air Space Lease in form and substance reasonably acceptable to the Administrative Agent.

"Retained Site" means, as of each date of determination, the interests in the Site which are (a) owned by the Companies, or (b) leased or subleased by the Companies, as lessee or sublessee. The Retained Site excludes (i) the rights of the Retail

Affiliate in respect of the Retail Air Space Parcels, and (ii) Condo Units and other rights and interests which are disposed of by the Companies following the Closing Date in compliance with the Loan Documents.

"Revolving Commitment" means as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and/or participate in Swing Line Loans and Letters of Credit, in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "Revolving Commitment" opposite such Lender's name on Schedule I to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

"Revolving Commitment Fee" as defined in Section 2.8(a).

"Revolving Commitment Fee Rate" means 0.75% per annum.

"Revolving Commitment Period" means the period from and including the Closing Date to the Revolving Termination Date.

"Revolving Credit Percentage" means as to any Revolving Lender at any time, the percentage which such Lender's Revolving Commitment then constitutes of the Total Revolving Commitments (or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal and/or face amount of such Lender's Revolving Extensions of Credit then outstanding constitutes of the aggregate principal and/or face amount of the Total Revolving Extensions of Credit then outstanding).

"Revolving Extensions of Credit" means as to any Revolving Lender at any time, the sum of (a) the aggregate principal amount of all Revolving Loans made by such Lender then outstanding, (b) such Lender's Revolving Credit Percentage of the L/C Obligations then outstanding, and (c) such Lender's Revolving Credit Percentage of the aggregate principal amount of Swing Line Loans then outstanding.

"Revolving Lender" means each Lender that has a Revolving Commitment or that is the holder of Revolving Loans.

"Revolving Loans" as defined in Section 2.1(c).

"Revolving Notes" as defined in Section 2.7(e).

"Revolving Termination Date" means the earlier of (a) the fifth anniversary of the Closing Date, or if such date is not a Banking Day, the next preceding Banking Day or (b) the date upon which the Loans become due and payable pursuant to Section 8.

"Schaeffer" means Glenn Schaeffer.

"SEC" means the Securities and Exchange Commission (or successors

thereto or an analogous Governmental Authority).

"Second Mortgage Upstream Guarantees" mean, collectively, the guarantees issued on the Closing Date by Parent and Resorts Properties I of the obligations under the Second Mortgage Indenture.

"Secured Parties" means collectively, the Administrative Agent, the Lenders, Specified Cash Management Affiliates, and Specified Hedge Affiliates that have agreed to be bound by the provisions of Section 7.2 of the Guarantee and Collateral Agreement as if it were a party thereto, and by the provisions of Section 9 hereof as if it were a Lender party hereto.

"Security Documents" means the collective reference to the Guarantee and Collateral Agreement, Intellectual Property Security Agreements, the Control Agreements, the Deed of Trust, and all other documents now or hereafter delivered to the Administrative Agent granting a Lien on any Property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

"Senior Permitted Liens" means Permitted Liens described in Sections 7.3(c), (d), (e), (f), (g), (k), (m), (n), (o), (p), (u), (v), (w) and (x) and any other Permitted Liens that are expressly permitted by the terms of the Loan Documents to be superior in priority to the Liens of the Security Documents.

"Single Employer Plan" means any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"Space Leases" means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate (as defined in the Deed of Trust), taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Retained Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate (as defined in the Deed of Trust) to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with the Loan Documents, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Retained Site, the Improvements or any part thereof.

"Specified Cash Management Affiliate" means, as to each Cash Management Agreement, and in determining whether that Cash Management Agreement is a Specified Cash Management Agreement, any Person who is a counterparty to that Cash Management Agreement that (a) is a Lender or an Affiliate of a Lender on the date of the execution of such Cash Management Agreement, (b) in the case of any Cash Management Agreement which is in existence on the date of this Agreement, is an Affiliate of a Lender on the date of this Agreement, in each case whether or not that Person later ceases to be an Affiliate of a Lender or the relevant Lender later ceases to be

a Lender.

"Specified Cash Management Agreement" means any Cash Management Agreement entered into by (i) any Borrower and (ii) any Lender or any Specified Cash Management Affiliate.

"Specified Hedge Affiliate" means, as to each Hedge Agreement, and in determining whether that Hedge Agreement is a Specified Hedge Agreement, any Person who is a counterparty to that Hedge Agreement that (a) is a Lender or an Affiliate of a Lender on the date of the execution of such Hedge Agreement, and (b) in the case of any Hedge Agreement which is in existence on the date of this Agreement, is an Affiliate of a Lender on the date of this Agreement, in each case whether or not that Person later ceases to be an Affiliate of a Lender or the relevant Lender later ceases to be a Lender.

"Specified Hedge Agreement" means any Hedge Agreement entered into by (i) any Borrower and (ii) any Lender or any Specified Hedge Affiliate.

"Subordinated Affiliate Expenses" means, collectively, the Credit Enhancement Fees, the Construction Fees, Completion Guaranty Reimbursement Obligations, the Funds Costs and Allocated Overhead Expense.

"Subordinated Debt" means Indebtedness that (i) does not have any scheduled principal payment, mandatory principal prepayment, sinking fund payment or similar payment due prior to the Term Loan Termination Date, (ii) is not secured by any Lien on any Property, (iii) is subordinated on terms and conditions reasonably satisfactory to the Administrative Agent and (iv) is subject to such covenants and events of default as may be reasonably acceptable to the Administrative Agent, *provided* that the Subordinated Affiliate Expenses shall not be considered to be Subordinated Debt.

"Substitute Lender" as defined in Section 10.13(a).

"Swing Line Commitment" means the obligation of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.5 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

"Swing Line Lender" means Bank of America, in its capacity as the lender of Swing Line Loans.

"Swing Line Loans" as defined in Section 2.5.

"Swing Line Notes" as defined in Section 2.7(e).

"Swing Line Participation Amount" as defined in Section 2.6(c).

"Syndication Agent" means Deutsche Bank Trust Company Americas, in its capacity as syndication agent.

"Synthetic Lease Obligations" means all monetary obligations of a Person

under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"Taking" means a taking or voluntary conveyance during the term of this Agreement of all or part of the Site, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting the Site or any portion thereof, whether or not the same shall have actually been commenced.

"Targeted Committed Condo Sales Proceeds" means as of each date set forth below, the amount set forth below opposite each date:

DATE	AMOUNT
March 31, 2009	\$463,555,992
June 30, 2009	\$559,332,023
September 30, 2009	\$662,770,137
December 31, 2009	\$704,911,591
March 31, 2010	\$739,390,962
June 30, 2010	\$766,208,251
September 30, 2010 and the last day of each Fiscal Quarter thereafter	\$780,000,000

"Tax Amount" means with respect to any period, (i) in the case of any direct or indirect member of a Company that is a Pass Through Entity, the Presumed Tax Liability of such direct or indirect member, and (ii) with respect to the Consolidated Members, the aggregate federal income tax liability such Consolidated Members would owe for such period if each was a corporation filing federal income tax returns on a stand alone basis at all times during its existence and, if any of the Consolidated Members files a consolidated or combined state income tax return such that it is not paying its own state income taxes, then Tax Amount shall also include the aggregate state income tax liability such Consolidated Members would have paid for such period if each was a corporation filing state income tax returns on a stand alone basis at all times during its existence.

"Taxable Income" means with respect to any Person for any period, the taxable income or loss of such Person for such period for federal income tax purposes as a result of such Person's equity ownership of one or more Companies that are Pass Through Entities for such period; provided, however, that all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss.

"Term Commitments" means, collectively, the Delay Draw Commitments and the Initial Term Commitments.

"Term Lenders" means, collectively, the Initial Term Lenders and the Delay Draw Lenders.

"Term Loan Termination Date" means the earlier of (a) the seventh anniversary of the Closing Date, or if such date is not a Banking Day, the next preceding Banking Day or (b) the date upon which the Loans become due and payable pursuant to Section 8.

"Term Loans" means, collectively, the Initial Term Loans and the Delay Draw Term Loans.

"Test Quarter" means the Fiscal Quarter ending on the First Test Date, and each subsequent Fiscal Quarter.

"Total Delay Draw Commitments" means at any time, the aggregate amount of the Delay Draw Commitments then in effect. The Total Delay Draw Commitments on the Closing Date are \$350,000,000.

"Total Leverage Ratio" means as of each date of determination, the ratio of (a) the Consolidated Total Debt as of that date to (b) EBITDA for the twelve month period ending on that date, provided that in the case of the first three full Fiscal Quarters following the Opening Date, EBITDA shall be annualized on a straight line basis for the period consisting of each of the full Fiscal Quarters beginning after the Opening Date (without regard to any partial prior Fiscal Quarters).

"Total Net Condo Sales Proceeds" means the sum without duplication of (a) the aggregate principal amount of the Bonded Condo Proceeds which are remitted to the Condo Proceeds Account and used for the construction of the Project, plus (b) the aggregate amount of the sales proceeds of Condo Units received in cash by the Companies and applied in reduction of the prepayment of the Loans pursuant to Section 2.11(a)(ii), plus (c) the amount of any deposits made by prospective purchasers of Condo Units which the Companies are entitled to retain as a result of the default of such purchasers.

"Total Revolving Commitments" means at any time, the aggregate amount of the Revolving Commitments then in effect. The Total Revolving Commitments on the Closing Date are \$800,000,000.

"Total Revolving Extensions of Credit" means at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Lenders outstanding at such time.

"Turnberry Marketing and Sales Agreement" means the Marketing and Sales Agreement dated as of June 6, 2007, by and between Las Vegas Holdings and Turnberry West Realty, Inc., as amended, restated, extended, supplemented or otherwise modified from time to time.

"Turnberry Residential" means Turnberry Residential Limited Partner,

L.P., a Delaware limited partnership, its successors and permitted assigns.

"Type" means as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

"United States" and "U.S." means the United States of America.

"Unrecorded Leases" means those certain leases and other real estate rights of the Companies described on Schedule 1.2 that have not been recorded in the appropriate real property records.

"Unreimbursed Amount" as defined in Section 3.3(a).

"Wet 'n Wild Property" means the approximately 27 acres of real property located immediately to the north of the Site.

"Wholly Owned Subsidiary" means as to any Person, any other Person all of the Equity Interests of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"Withdrawal Period" as defined in Section 10.13(b).

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have such defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Companies not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

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

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

(e) The words "including" and "includes" and words of similar import when used in this Agreement shall not be limiting and shall mean "including without limitation" or "includes without limitation", as the case may be.

(f) The words "will" and "shall" and words of similar import when used in this Agreement shall mean a command.

(g) Upon termination of the Disbursement Agreement, any defined terms used

herein or the other Loan Documents having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement as in effect immediately prior to such termination.

(h) Unless expressly described to the contrary, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at the time of determination.

(i) Unless the context requires otherwise, the expressions "payment in full", "paid in full" and any other similar terms or phrases when used herein shall mean the payment in full, in immediately available funds, of the Obligations (other than (x) contingent reimbursement or indemnification obligations and (y) obligations under Specified Hedge Agreements and Specified Cash Management Agreements that, at such times of payment, are allowed by the terms thereof to remain outstanding).

1.3 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.4 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 Loans and Commitments Generally. Pursuant to this Agreement, the Lenders shall make the Loans described below, (1) on the Closing Date, for remittance in accordance with the Flow of Funds Memo, or thereafter for remittance to the Bank Proceeds Account under the Disbursement Agreement for disbursement in accordance with the Disbursement Agreement (the "Disbursement Agreement Loans") or, (2) following the Opening Date (except for Revolving Loans made on account of the Bank Revolving Facility Completion Reserve Amount) to a Direct Funding Account or another account reasonably acceptable to the Administrative Agent (the "Direct Loans").

(a) Initial Term Loans. Subject to the terms and conditions hereof, and in reliance upon the representations and warranties of set forth herein and in the Disbursement Agreement, each Initial Term Lender severally agrees to make term loans ("Initial Term Loans") to Borrowers on the Closing Date in an aggregate principal amount not to exceed the amount of the Initial Term Commitment of such Initial Term Lender. The making of the Initial Term Loans on the Closing Date shall be subject to the fulfillment of both the applicable conditions precedent set forth in Section 5 and the applicable conditions set forth in Section 3 of the Disbursement Agreement. The proceeds of the Initial Term Loans will be disbursed in accordance with the Flow of Funds Memo. The Initial Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by Borrowers and notified to the Administrative Agent in accordance with Sections 2.4 and 2.12. Initial Term Loans borrowed and subsequently repaid or prepaid may not be reborrowed.

(b) Delay Draw Term Loans. Subject to the terms set forth herein, each Delay Draw Lender severally agrees to make term loans ("Delay Draw Term Loans") to Borrowers on any Banking Day during the Delay Draw Commitment Period in an aggregate principal amount not to exceed the amount of the Delay Draw Commitment of such Lender, provided that:

(i) each borrowing under the Delay Draw Commitments shall be in an amount which is not less than \$150,000,000 or in an integral multiple of \$1,000,000 which is in excess of \$150,000,000;

(ii) no Delay Draw Term Loans shall be made prior to the date upon which the entire amount on deposit in the Second Mortgage Proceeds Account is disbursed;

(iii) the proceeds of each Delayed Draw Term Loan will be applied first to repay in full any then outstanding Revolving Loans and Swing Line Loans (but without reducing the Total Revolving Commitments), and second, to the extent of any excess, be credited to the Bank Proceeds Account; and

(iv) each Delay Draw Term Loan shall be made to the Bank Proceeds Account (and/or shall repay outstanding Revolving Loans to the extent thereof) subject only to the satisfaction of the conditions set forth in Section 5.2, and shall thereafter be disbursed from the Bank Proceeds Account subject only to the conditions set forth in

Section 3.3 of the Disbursement Agreement.

The Delay Draw Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by Borrowers and notified to the Administrative Agent in accordance with Sections 2.4 and 2.12. Delay Draw Term Loans borrowed and subsequently repaid or prepaid may not be reborrowed.

(c) Revolving Loans. Subject to the terms and conditions hereof, and in reliance upon the applicable representations and warranties set forth herein and in the Disbursement Agreement, each Revolving Lender severally agrees to make Revolving Loans ("Revolving Loans") to Borrowers from time to time during the Revolving Commitment Period, provided that:

(i) the aggregate outstanding principal amount of the Revolving Loans of each Lender, when added to such Lender's Revolving Credit Percentage of the sum of (i) the L/C Obligations then outstanding and (ii) the aggregate principal amount of the Swing Line Loans then outstanding, shall not exceed the amount of such Lender's Revolving Commitment;

(ii) the Total Revolving Extensions of Credit shall not exceed the Total Revolving Commitments at any time; and

(iii) unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000.

The making of Revolving Loans which are Disbursement Agreement Loans to the Bank Proceeds Account shall be subject only to the fulfillment of the applicable conditions set forth in Section 5.2, and shall thereafter be disbursed from the Bank Proceeds Account subject only to the conditions set forth in Section 3.3 of the Disbursement Agreement. The making of Revolving Loans which are Direct Loans shall be subject only to the conditions precedent set forth in Section 5.3. The Revolving Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by Borrowers and notified to the Administrative Agent in accordance with Sections 2.4 and 2.12. Revolving Loans may be borrowed and repaid, and subsequently reborrowed.

(d) Treatment of Direct Loans. Each Direct Loan (including each Swing Line Loan) shall be remitted to a Direct Funding Account (or to another account reasonably acceptable to the Administrative Agent) and may be used for any purposes permitted by Section 6.11 of this Agreement and (while in effect) the Disbursement Agreement.

2.2 Amortization and Scheduled Principal Payments.

(a) On each Amortization Date, commencing with the first such date which is on or following the first anniversary of the Opening Date, Borrowers shall make principal payments on the Term Loans (including, for the avoidance of doubt, the Delay Draw Term Loans) in the amount of \$2,625,000, provided, that the Term Loans and all other amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Term Loan Termination Date.

(b) There shall not be any scheduled required reductions in the Revolving Commitments (other than upon the conversion thereof to Conversion Term Loans as contemplated by Section 2.3), or scheduled repayments of the Revolving Loans or the Conversion Term Loans; provided that Borrowers shall repay all outstanding Revolving Loans and Conversion Term Loans on the Revolving Termination Date.

2.3 Partial Conversion of the Revolving Commitments. On the Conversion Date, a \$200,000,000 portion of the outstanding Revolving Loans shall immediately be converted to Conversion Term Loans without further action of the parties hereto. At such time, Revolving Loans held by the Lenders shall be converted ratably in accordance with their Revolving Credit Percentage of the Revolving Credit Facility. Concurrently with such conversion, the Revolving Commitments of the Lenders shall be ratably reduced in an aggregate principal amount equal to \$200,000,000. No portion of the Conversion Term Loans which is repaid may be reborrowed, provided that the Conversion Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by Borrowers and notified to the Administrative Agent in accordance with Sections 2.4 and 2.12, provided that no Conversion Term Loan shall be made as a Eurodollar Loan after the day that is one month prior to the Revolving Termination Date. The Conversion Term Loans shall bear interest in the manner set forth in Section 2.14, and shall be payable as set forth in Section 2.7. On and after the Conversion Date, Borrowers' may elect to replace any Revolving Notes with new Revolving Notes which appropriately reflect the revised Revolving Commitments. Upon request, Borrowers agree that they shall issue to each Lender desiring a Conversion Term Note a Conversion Term Note in the appropriate principal amount.

2.4 Procedures for Borrowing; Where Disbursed.

(a) Each Notice of Borrowing (whether for Disbursement Agreement Loans or Direct Loans) shall be received by the Administrative Agent prior to 12:00 Noon, (i) three Banking Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (ii) one Banking Day prior to the requested Borrowing Date, in the case of Base Rate Loans. Each Notice of Borrowing shall specify (A) the amount and Type of Loans to be borrowed, (B) the requested Borrowing Date and (C) in the case of Eurodollar Loans, the length of the initial Interest Period therefor.

(b) Upon receipt of each Notice of Borrowing which requests the making of Loans hereunder, the Administrative Agent shall promptly notify each Delay Draw Lender and/or Revolving Lender, as appropriate, thereof. Each such Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent at the Administrative Agent's Office prior to 10:00 A.M., on the Borrowing Date requested by Borrowers in funds immediately available to the Administrative Agent.

(c) Upon satisfaction or waiver of the applicable conditions precedent specified in Section 2.1, the proceeds of the Loans will be made available by the Administrative Agent, in like funds as received by the Administrative Agent from the Lenders, not later than 12:00 Noon, on the applicable Borrowing Date. The proceeds of the Disbursement Agreement Loans will be remitted to the Bank Proceeds Account and made available to Borrowers in accordance with and upon fulfillment of conditions set forth in the Disbursement Agreement. The proceeds of Direct Loans will be made available to Borrowers by the Administrative Agent

crediting a Direct Funding Account or another account reasonably acceptable to the Administrative Agent.

(d) Subject to Section 2.1(b), each borrowing or conversion under the Initial Term Loans, the Delay Draw Commitments, the Revolving Commitments, or the Conversion Term Loans shall be in an amount equal to (x) in the case of Base Rate Loans, \$5,000,000 or a whole multiple thereof (or, if the then aggregate Available Delay Draw Commitments or Available Revolving Commitments, as applicable, are less than \$5,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$10,000,000 or whole multiples of \$1,000,000 in excess thereof; provided, that the Swing Line Lender may request, on behalf of Borrowers, borrowings under the Revolving Commitments which are Base Rate Loans in other amounts pursuant to Section 2.6.

(c) In the event that the proceeds of any Loans deposited into the Bank Proceeds Account pursuant to subsection (c) above are not disbursed by the Disbursement Agent on the applicable Borrowing Date, the proceeds of such Loans shall be held by the Disbursement Agent in accordance with the provisions set forth in the Disbursement Agreement; provided, however, that the proceeds of such Loans shall continue to bear interest and be repayable in accordance with the provisions set forth in this Agreement. In the event that the Administrative Agent receives a Stop Funding Notice from the Disbursement Agent, none of the Administrative Agent and the Lenders shall, or shall have any obligation to, make Loans until the circumstances associated with such Stop Funding Notice have been resolved; provided, however, that Borrowers shall be obligated to make any payments due pursuant to Section 2.19 as a result thereof.

2.5 Swing Line Commitment.

(a) Subject to the terms and conditions hereof, the Swing Line Lender agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.5, to make available to Borrowers a portion of the credit otherwise available to Borrowers under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans ("Swing Line Loans") to Borrowers; provided, that (i) the aggregate principal amount of Swing Line Loans outstanding at any time shall not exceed the Swing Line Commitment then in effect, (ii) Borrowers shall not request, and the Swing Line Lender shall not make, any Swing Line Loan if, after giving effect to the making of such Swing Line Loan, the aggregate amount of the Available Revolving Commitments would be less than zero, (iii) Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (iv) no Swing Line Loan shall be made prior to the Opening Date (or thereafter on account of the Bank Revolving Facility Completion Reserve Amount). Borrowers may use the Swing Line Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swing Line Loans shall be Base Rate Loans only, and, notwithstanding anything to the contrary herein, may not be converted to Eurodollar Loans.

(b) Borrowers shall repay all outstanding Swing Line Loans on the Revolving Termination Date.

2.6 Procedure for Swing Line Borrowing; Refunding of Swing Line Loans.

(a) Whenever any Borrower desires that the Swing Line Lender make Swing Line Loans it shall give the Swing Line Lender irrevocable telephonic notice confirmed promptly in writing (which telephonic notice must be received by the Swing Line Lender not later than 1:00 P.M., on the proposed Borrowing Date), specifying (i) the amount to be borrowed and (ii) the requested Borrowing Date (which shall be a Banking Day during the Revolving Commitment Period). Each borrowing under the Swing Line Commitment shall be in an amount equal to \$500,000 or a \$100,000 multiple in excess thereof. Not later than 3:00 P.M., on the Borrowing Date specified in a notice in respect of Swing Line Loans, the Swing Line Lender shall make available to the Administrative Agent at the Administrative Agent's Office an amount in immediately available funds equal to the amount of the Swing Line Loan to be made by the Swing Line Lender; provided, that the Swing Line Lender shall not be obligated to make any Swing Line Loans at a time when a Lender Default exists unless the Swing Line Lender has entered into arrangements satisfactory to it to eliminate the Swing Line Lender's risk with respect to the Defaulting Lender's or Lenders' participation in such Swing Line Loans. The Administrative Agent shall make the proceeds of such Swing Line Loan available to Borrowers on such Borrowing Date by depositing such proceeds into a Direct Funding Account (or such other account as is reasonably acceptable to the Administrative Agent) in immediately available funds.

(b) The Swing Line Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of Borrowers (which hereby irrevocably directs the Swing Line Lender to act on its behalf), on one Banking Day's notice given by the Swing Line Lender no later than 12:00 Noon, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Credit Percentage of the aggregate amount of the Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date of such notice, to repay the Swing Line Lender. The Swing Line Lender shall promptly notify Borrowers of any such request as soon as reasonably practicable. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Administrative Agent's Office in immediately available funds, not later than 10:00 A.M., one Banking Day after the date of such notice. The proceeds of such Revolving Loans shall be immediately made available by the Administrative Agent to the Swing Line Lender for application by the Swing Line Lender to the repayment of the Refunded Swing Line Loans. Each Borrower irrevocably authorizes the Swing Line Lender to charge Borrowers' accounts with the Administrative Agent (up to the amount available in each such account) in order to immediately pay the amount of such Refunded Swing Line Loans to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swing Line Loans and the Administrative Agent shall provide the Borrowers with notice of any such action as soon as reasonably practicable.

(c) If prior to the time a Revolving Loan would have otherwise been made pursuant to Section 2.6(b), one of the events described in Section 8(f) shall have occurred and be continuing with respect to any Borrower or if for any other reason, as determined by the Swing Line Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.6(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.6(b) (the "Refunding Date"), purchase for cash an

undivided participating interest in the then outstanding Swing Line Loans by paying to the Swing Line Lender an amount (the "Swing Line Participation Amount") equal to (i) such Revolving Lender's Revolving Credit Percentage times (ii) the sum of the aggregate principal amount of Swing Line Loans then outstanding which were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swing Line Lender has received from any Revolving Lender such Lender's Swing Line Participation Amount, the Swing Line Lender receives any payment on account of the Swing Line Loans, the Swing Line Lender will distribute to such Revolving Lender its Swing Line Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swing Line Loans then due); provided, however, that in the event that such payment received by the Swing Line Lender is required to be returned, such Revolving Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.6(b) and to purchase participating interests pursuant to Section 2.6(c) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender or any Borrower may have against the Swing Line Lender, any Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5; (iii) any adverse change in the condition (financial or otherwise) of any Borrower or any other Person; (iv) any breach of this Agreement or any other Loan Document by any Borrower or any other Person (including, without limitation, any other Revolving Lender); (v) any reduction or termination of the Commitments; or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing, and each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

2.7 Repayment of Loans: Evidence of Indebtedness.

(a) Borrowers hereby, jointly and severally unconditionally promise to pay to the Administrative Agent for the account of the appropriate Revolving Lender, Term Lender, or Conversion Term Lender as the case may be, (i) the then unpaid principal amount of each Revolving Loan, and Conversion Term Loan on the Revolving Termination Date, and (ii) the principal amount of each Term Loan of such Term Lender in installments according to the amortization schedule set forth in Section 2.2 and the then unpaid principal amount of each Term Loan of such Term Lender on the Term Loan Termination Date. Borrowers hereby jointly and severally agree to pay interest on the unpaid principal amount of the Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.14.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of Borrowers to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent, on behalf of Borrowers, shall maintain the Register pursuant to Section 10.6(c), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder and any Note evidencing such Loan, the Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from Borrowers to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from Borrowers and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 2.7(b) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of Borrowers therein recorded in the absence of manifest error; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of any Borrower to repay (with applicable interest) the Loans made to such Borrower by such Lender in accordance with the terms of this Agreement.

(e) Each Borrower agrees that, upon the request to the Administrative Agent by any Lender, such Borrower will execute and deliver to such Lender a promissory note of Borrowers evidencing any Conversion Term Loans, Delay Draw Term Loans, Initial Term Loans, Revolving Loans or Swing Line Loans, as the case may be, of such Lender, substantially in the forms of Exhibit G-1, G-2, G-3, G-4 or G-5 hereto, respectively, with appropriate insertions as to date and principal amount (such notes, respectively, "Conversion Term Notes", "Delay Draw Term Notes", "Initial Term Notes", "Revolving Notes" and "Swing Line Notes").

2.8 Commitment Fees, etc.

(a) Each Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee (the "Revolving Commitment Fee") for the period from and including the Closing Date to the last day of the Revolving Commitment Period, computed at the Revolving Commitment Fee Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Termination Date, commencing on the first of such dates to occur after the date hereof; provided that (a) any Revolving Commitment Fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by Borrowers so long as such Lender shall be a Defaulting Lender, except to the extent that such Revolving Commitment Fee shall otherwise have been due and payable by Borrowers prior to such time, and (b) no such Revolving Commitment Fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) Each Borrower agrees to pay to the Administrative Agent for the account of each Delay Draw Lender a commitment fee for the period from and including the Closing Date to the last day of the Delay Draw Commitment Period, computed at the Delay Draw Commitment Fee Rate on the average daily amount of the Available Delay Draw Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the last day of the Delay Draw Commitment Period, commencing on the first of such dates to occur after the date hereof;

provided that (i) any such commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by Borrowers so long as such Lender shall be a Defaulting Lender, except to the extent that such commitment fee shall otherwise have been due and payable by Borrowers prior to such time, and (ii) that no such commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(c) Each Borrower agrees to pay to the Arrangers, the Managers, and the Administrative Agent the fees in the amounts and on the dates previously agreed to in writing by Borrowers, the Arrangers, the Managers and the Administrative Agent including, without limitation, pursuant to the Facility Fee Letter which Borrowers hereby agree to be obligated under as if originally parties thereto.

(d) Each Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates from time to time agreed to in writing by Borrowers and the Administrative Agent including, without limitation, pursuant to the Administrative Agent Fee Letter.

2.9 Termination or Reduction of Commitments. Borrowers shall have the right, upon not less than three Banking Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments; provided, that no such termination or reduction of Revolving Commitments shall be permitted prior to the Completion Date; provided, further, that no such termination or reduction of Revolving Commitments shall be permitted if, (i) after giving effect thereto and to any prepayments of the Revolving Loans and Swing Line Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments or (ii) such termination or reduction is prohibited by the Disbursement Agreement (while in effect). Any such reduction shall be in an amount equal to \$5,000,000, or a whole multiple thereof (or, if less, shall reduce the Revolving Commitments to zero), and shall reduce permanently the Revolving Commitments then in effect. In addition, during the Delay Draw Commitment Period, Borrowers may, upon notice to the Administrative Agent as set forth above, from time to time terminate (in whole or in part) the unused portion of the aggregate Delay Draw Commitments, provided, that no such termination or reduction of Delay Draw Commitments shall be permitted prior to the Completion Date.

2.10 Optional Prepayments.

(a) Subject to clause (b) of this Section, Borrowers may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent at least three Banking Days prior thereto in the case of Eurodollar Loans and at least one Banking Day prior thereto in the case of Base Rate Loans, which notice shall (i) designate whether Borrowers are prepaying Revolving Loans, Conversion Term Loans and/or Term Loans and (ii) specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, Borrowers shall also pay any amounts owing pursuant to Section 2.19. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is

given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans (unless all Revolving Loans are being repaid and the Revolving Commitments terminated) and Conversion Term Loans (unless all Conversion Term Loans are being repaid) that are Base Rate Loans and Swing Line Loans) accrued interest to such date on the amount prepaid. Partial prepayments of the Loans shall be in an aggregate principal amount of \$5,000,000 or a whole multiple in excess thereof. Partial prepayments of Swing Line Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple in excess thereof.

(b) In the event that, prior to the first anniversary of the Opening Date, the Term Loans are prepaid in whole or in part from the proceeds of any incurrence of Indebtedness (other than Indebtedness issued through a public offering or a private placement) which has an interest rate lower than the interest rate then applicable to the Term Loans, the Borrowers shall pay to each holder of a Term Loan, concurrently with such prepayment, a prepayment premium (expressed as a percentage of the aggregate principal amount of the Term Loan prepaid) of 101% on the principal amount of the Term Loan of such holder which are prepaid.

2.11 Mandatory Prepayments and Commitment Reductions.

(a) Borrowers shall prepay the Loans (on the dates required by clause (b) of this Section, and with application in the manner set forth in clause (c) of this Section), in an amount which is equal to:

(i) 100% of the Net Cash Proceeds received by the Companies from each Asset Sale;

(ii) 100% of the Net Cash Proceeds received by the Companies from each sale of Condo Units;

(iii) 100% of all Loss Proceeds received by the Companies following the Opening Date, to the extent that the same are required to be applied to the prepayment of the Loans pursuant to Section 2.22(c);

(iv) 100% of the Net Cash Proceeds of any Subordinated Debt issued by the Companies;

(v) 100% of the Net Cash Proceeds of any Equity Interests hereafter issued by any Subsidiary of Las Vegas Holdings to a person other than Las Vegas Holdings or one of its other Subsidiaries or by Las Vegas Holdings to any Person which is not wholly-owned by Parent;

(vi) The Lender Excess Cash Flow Percentage of Excess Cash Flow for each Excess Cash Flow Period; and

(vii) As and when required by Section 7.24, using the remaining proceeds of the Liquidity Account.

(b) Each of the prepayments described in clause (a) shall be required to be

made on the following dates:

(i) Each prepayment required by clause (a)(i) shall be made not later than thirty days following the consummation of the related Asset Sale unless the Companies have delivered a Reinvestment Notice in relation thereto, provided that the aggregate Net Cash Proceeds of Asset Sales that may be the subject of Reinvestment Notices shall not exceed \$5,000,000 in any Fiscal Year. To the extent that any Net Cash Proceeds which are the subject of a Reinvestment Notice are not reinvested in property used in Permitted Businesses within nine months following the date of the related Asset Sale, then Borrowers shall immediately prepay the Loans to the extent of the Net Cash Proceeds not reinvested;

(ii) Each prepayment required by clause (a)(ii) shall be made within one calendar month following the date upon which the related Condo Unit sale is closed with the retail purchaser;

(iii) Each prepayment required by clause (a)(iii) shall be made on the Banking Day on which Loss Proceeds are required to be applied to the prepayment of Loans pursuant to Section 2.22;

(iv) Each prepayment required by clause (a)(iv) or by clause (a)(v) shall be made immediately upon the receipt by the Companies of the related Net Cash Proceeds;

(v) Each prepayment required by reason of Excess Cash Flow for any Excess Cash Flow Period pursuant to clause (a)(vi) shall be made within five Banking Days after the date on which the applicable financial statements of Las Vegas Holdings are required to be delivered to the Lenders pursuant to Section 6.1(a). For each Excess Cash Flow Period ending on any December 31, the applicable financial statements shall be the audited financial statements delivered pursuant to Section 6.1(a)(i). For each Excess Cash Flow Period ending on any June 30, the applicable financial statements shall be the unaudited quarterly financial statements for the Fiscal Quarter ending on that June 30 delivered pursuant to Section 6.1(a)(ii). It is agreed that in the event that due to any audit adjustments made in connection with any financial statements delivered pursuant to Section 6.1(a)(i), the amount of the prior Excess Cash Flow payment proves to have been incorrect, then the Excess Cash Flow payment made in respect of the Excess Cash Flow Period then ended will be adjusted (upwards or downwards) as required to correct the amount of the prior payment (any increased amount being the "Excess Cash Flow Recapture"); and

(vi) Each prepayment required by clause (a)(vii) shall be made within thirty days following the Banking Day on which the Compliance Certificate referred to in Section 7.24 is delivered.

(c) Each prepayment of the Loans made pursuant to this Section shall be applied as follows:

(i) Each prepayment of the types required by clause (a)(i) or (a)(vii)

shall be applied solely to the Revolving Loans (and shall not reduce the Total Revolving Commitments);

(ii) Each prepayment of the types required by clauses (a)(ii) through (a)(v) shall be applied to the prepayment of the Revolving Loans and the Term Loans, ratably on the basis of the proportions that (1) the Revolving Commitments on the Closing Date bear to (2) the Term Commitments on the Closing Date. To the extent that any Conversion Term Loans are then outstanding, then the portion of such prepayment allocable to the Revolving Loans shall be applied to the prepayment of the Revolving Loans and the Conversion Term Loans, ratably on the basis that the principal amount of the Conversion Term Loans then outstanding bears to the Total Revolving Commitments then outstanding. Each such prepayment of the Revolving Loans shall correspondingly reduce the Revolving Commitments. The portion of such prepayment allocable to the Term Loans shall be applied ratably to the prepayment of the Term Loans then outstanding.

(iii) Each prepayment made from Excess Cash Flow shall be applied first, to the prepayment of the Term Loans, and second, to the prepayment of the Conversion Term Loans and the Revolving Loans (ratably on the basis of the proportion that the principal amount of the Conversion Term Loans then outstanding bears to the Total Revolving Commitments then outstanding). The portion of such prepayment allocable to the Term Loans shall be applied ratably to the prepayment of the Term Loans then outstanding.

(iv) Each Lender which is a holder of Term Loans may reject any prepayment of the Term Loans otherwise allocable to it pursuant to this Section (in which case, such prepayment shall be applied to the ratable reduction of the Conversion Term Loans and Revolving Loans and, to the extent applied to the Revolving Loans, shall correspondingly reduce the Total Revolving Commitments (*provided* that no such application shall result in the Total Revolving Commitments being less than \$300,000,000 (or, to the extent that the conversion thereof to Conversion Term Loans contemplated by Section 2.3 has not yet occurred, \$500,000,000).

(v) The application of each prepayment pursuant to this Section 2.11 shall be made, first, to Base Rate Loans and, second, to Eurodollar Loans. Each prepayment of the Loans under this Section 2.11 shall be accompanied by accrued interest to such date on the amount prepaid.

2.12 Conversion and Continuation Options.

(a) Borrowers may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent at least two Banking Days' prior irrevocable notice of such election, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. Other than with respect to Swing Line Loans which shall at all times be Base Rate Loans, Borrowers may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent at least three Banking Days' prior irrevocable notice of such election (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan under a

particular Facility may be converted into a Eurodollar Loan (i) when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such conversions or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by any Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no Eurodollar Loan under a particular Facility may be continued as such (i) when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such continuations or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility, and provided, further, that if Borrowers shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.13 Minimum Amounts and Maximum Number of Eurodollar Tranches.
Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof and (b) no more than ten Eurodollar Tranches shall be outstanding at any one time.

2.14 Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest for each day at a rate per annum equal to the Base Rate determined for such day plus the Applicable Margin.

(c) (i) If all or a portion of the principal amount of any Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise) or an Event of Default has otherwise occurred and is continuing, all outstanding Loans and Reimbursement Obligations (whether or not overdue) shall bear interest at a rate per annum that is equal to (x) in the case of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.0% or (y) in the case of Reimbursement Obligations, the rate applicable to Base Rate Loans under the Revolving Credit Facility plus 2.0%, and (ii) if all or a portion of any interest payable on any Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder (in

accordance with Section 2.8 or otherwise) shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to Base Rate Loans under the relevant Facility plus 2.0% (or, in the case of any such other amounts that do not relate to a particular Facility, the rate then applicable to Base Rate Loans under the Revolving Credit Facility plus 2.0%), in each case, with respect to subsections (i) and (ii) above, from the date of such non-payment until such amount is paid in full (after as well as before judgment) or so long as such Event of Default is continuing.

(d) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

2.15 Computation of Interest and Fees.

(a) Interest, fees and commissions payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans the rate of interest on which is calculated on the basis of Bank of America's "prime rate", the interest thereon shall be calculated on the basis of a 365 or 366-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify Borrowers and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify Borrowers and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on Borrowers and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of Borrowers, deliver to Borrowers a statement showing the quotations, if any, used by the Administrative Agent in determining any interest rate pursuant to Section 2.15(a).

(c) If, as a result of any restatement of or other adjustment to the financial statements of Borrowers or for any other reason, the Administrative Agent determines that (i) the Total Leverage Ratio as calculated by Borrowers as of any applicable date was inaccurate and (ii) a proper calculation of the Total Leverage Ratio would have resulted in higher pricing for such period, Borrowers shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrowers under the Bankruptcy Code, automatically and without further action by the Administrative Agent, any Lender or the Issuing Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the Issuing Lender, as the case may be, under Section 3.3, 3.9 or 2.14(c) or under Section 8. Borrowers' obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

2.16 Inability to Determine Interest Rate. If prior to the first day of any Interest Period:

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(a) the Administrative Agent determines (which determination shall be conclusive and binding upon Borrowers) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Applicable Facility Lenders in respect of the relevant Facility that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period.

the Administrative Agent shall give telecopy or telephonic notice thereof to Borrowers and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then current Interest Period with respect thereto, to Base Rate Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall Borrowers have the right to convert Loans under the relevant Facility to Eurodollar Loans.

2.17 Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes covered by Section 2.18 and changes in the basis of taxation or rate of tax on the overall net income (including branch profits) and franchise (and similar) taxes imposed in lieu of net income taxes of such Lender);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, Borrowers shall promptly pay

such Lender, upon its demand, any additional amounts necessary to compensate such Lender on an after-tax basis for such increased cost or reduced amount receivable; provided, that Borrowers shall not be required to compensate a Lender pursuant to this subsection (a) for any increased costs or reduced amounts receivable from more than six months prior to the date on which such Lender notified Borrowers of such Lender's intention to claim compensation therefor; and provided, further, that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect. If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify Borrowers in writing (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled, and setting forth in such notice, in reasonable detail, the basis and calculation of such amounts.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to Borrowers (with a copy to the Administrative Agent) of a written request therefor (which request shall set forth, in reasonable detail, the basis and calculation of the additional amounts sought), Borrowers shall pay to such Lender such additional amount or amounts as set forth in the aforesaid notice; provided, that Borrowers shall not be required to compensate a Lender pursuant to this subsection (b) for any amounts incurred more than six months prior to the date on which such Lender notified Borrowers of such Lender's intention to claim compensation therefor; and provided, further, that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to Borrowers (with a copy to the Administrative Agent) and setting forth, in reasonable detail, the basis and calculation of such amounts shall be conclusive in the absence of manifest error. The obligations of Borrowers pursuant to this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of that Lender's right to demand such compensation, provided that Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies Borrowers of the circumstances giving rise to such increased costs or reductions and of that Lender's intention to claim compensation therefor (except that, if the circumstances giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended

to include the period of retroactive effect thereof).

2.18 Taxes.

(a) All payments made by any Borrower or any Guarantor under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes (including branch profits taxes) and franchise and similar taxes (imposed in lieu of net income taxes) imposed on the Administrative Agent, any Arranger, any Manager or any Lender as a result of a present or former connection between Administrative Agent, such Arranger, such Manager or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from Administrative Agent's, such Arranger's, such Manager's or such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") are required to be withheld from any amounts payable to the Administrative Agent, to any Arranger, any Manager or any Lender hereunder, the amounts so payable to Administrative Agent, such Arranger, such Manager or such Lender shall be increased to the extent necessary to yield to the Administrative Agent, such Arranger, such Manager or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts that would have been received hereunder or under any other Loan Document had such withholding not been required; provided, however, that a Borrower or a Guarantor shall not be required to increase any such amounts payable to the Administrative Agent, to any Arranger, any Manager or any Lender with respect to any Non-Excluded Taxes (i) that are attributable to Administrative Agent's, such Arranger's, such Manager's or such Lender's failure to comply with the requirements of subsection (f) or (g) of this Section 2.18, or (ii) that are United States withholding taxes imposed on amounts payable to Administrative Agent, such Arranger, such Manager or such Lender at the time Administrative Agent, such Arranger, such Manager or such Lender becomes a party to this Agreement, except to the extent that Administrative Agent's, such Arranger's, such Manager's or such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from a Borrower or a Guarantor with respect to such Non-Excluded Taxes pursuant to this Section 2.18(a). The applicable Borrower or Guarantor shall make any such required withholding and pay the full amount withheld to the relevant tax authority or other Governmental Authority in accordance with applicable Requirements of Law.

(b) If any Arranger, Agent, Manager or Lender, as applicable, receives a refund, credit or other tax benefit in respect of a tax for which a payment has been made by any Borrower or Guarantor pursuant to this Section 2.18, which refund, credit or other tax benefit in the good faith judgment of such Arranger, Agent, Manager or Lender, as the case may be, is attributable to such payment made by such Borrower or Guarantor, then such Arranger, Agent, Manager or Lender, as the case may be, shall reimburse such Borrower or Guarantor for such amount as such Arranger, Agent, Manager or Lender, as the case may be, determines in good faith to be the proportion of the refund, credit or other tax benefit as will leave it, after such reimbursement, in the same position it would have been in if the payment of such tax and any

payment by such Borrower or Guarantor under this Section 2.18 had not been made. Subject to the first sentence of this Section 2.18(b), upon the reasonable request of a Borrower or a Guarantor (and at the expense of such Persons), the Lender or the Administrative Agent, as applicable, shall at its sole discretion, exercised in good faith, use reasonable efforts to cooperate with a Borrower or a Guarantor with a view to obtaining a refund, credit or other tax benefit in respect of any Non-Excluded Taxes with respect to which a Borrower or a Guarantor has paid any amounts pursuant to Section 2.18 and which a Borrower or a Guarantor, on advice of counsel, reasonably believes were not correctly or legally asserted by the relevant Governmental Authority.

(c) Subject to subsection (f) below, Borrowers shall indemnify the Administrative Agent, each Arranger, each Manager and any Lender for the full amount of Non-Excluded Taxes to the extent payable but not paid by any Borrower or any Guarantor pursuant to Section 2.18(a) and paid by such Arranger, Agent, Manager or Lender or any of their respective Affiliates (including, without limitation, any Non-Excluded Taxes imposed by any Governmental Authority on amounts payable under Section 2.18(a) or this Section 2.18(c) and any penalties, additions to tax interest and related expenses attributable to such Non-Excluded Taxes). Payment under this indemnification shall be made within ten Banking Days from the date the Administrative Agent, any Arranger, any Manager or any Lender or any of their respective Affiliates makes written demand therefor, which demand shall set forth in reasonable detail the basis and calculation of the amounts demanded. Any Lender (or transferee) claiming any indemnity payment or additional amounts payable pursuant to Section 2.18(a) shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by a Borrower or a Guarantor if the making of such a filing would avoid the need for or reduce the amount of any such indemnity payment or additional amounts that may thereafter accrue.

(d) Whenever any Non-Excluded Taxes are payable by a Borrower or a Guarantor, such Borrower or Guarantor shall pay such taxes in accordance with applicable Requirements of Law and, as promptly as practicable thereafter, such Borrower or Guarantor shall send to the Administrative Agent for the account of the relevant Arranger, Agent, Manager or Lender, as the case may be, a certified copy of an original official receipt received by such Borrower or Guarantor showing payment thereof.

(e) The agreements in this Section 2.18 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(f) Each Lender (or transferee) that is not a "United States person" (as defined in Section 7701(a)(30) of the Code) (a "Non-U.S. Lender") shall deliver to Borrowers and the Administrative Agent (and, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two duly completed copies of U.S. Internal Revenue Service Form W-8BEN and/or Form W-8 IMY or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," a Form W-8BEN and a statement substantially in the form of Exhibit H hereto to the effect that such Non-U.S. Lender is eligible for a complete exemption from withholding of U.S. taxes under Section 871(h) or 881(c) of the Code, or any subsequent versions of any of the foregoing or successors thereto, properly

completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by any Borrower or any Guarantor under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and on or before the date of the first payment to it following the date, if any, such Non-U.S. Lender changes its applicable lending office pursuant to Section 2.21 hereof. In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify Borrowers at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrowers (or any other form of certification adopted by the U.S. taxing authorities for such purpose). If a Non-U.S. Lender is unable to deliver any form pursuant to this Section 2.18(f), such Non-U.S. Lender shall be entitled to neither relief from withholding nor indemnity hereunder with respect to Non-Excluded Taxes for the period that would have been covered by such form, unless (i) such Non-U.S. Lender's inability to deliver such form resulted from a change in law after the date on which such Lender became a Lender hereunder or as a result of a change in the circumstances of any Borrower or any Guarantor or the use of proceeds of such Non-U.S. Lender's loans or (ii) such Non-U.S. Lender's assignor (if any) was entitled, at the time of assignment, to the indemnity afforded hereunder. Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver. Each Lender that is not a Non-U.S. Lender shall promptly deliver to Borrowers two duly completed copies of United States Internal Revenue Service Form W-9 (or any applicable successor form) establishing that such Lender is not subject to United States backup withholding tax.

(g) Each Arranger, Agent, Manager and Lender that is entitled to an exemption from non-U.S. withholding taxes under the law of the jurisdiction in which a Borrower or a Guarantor is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement or any other Loan Document shall deliver to Borrowers and the relevant Guarantor(s), as applicable (with a copy to the Administrative Agent), at the time or times prescribed by applicable Requirements of Law or reasonably requested by Borrowers or such Guarantor(s), such properly completed and executed documentation prescribed by applicable Requirements of Law as will permit such payments to be made without withholding; provided, that such Arranger, Agent, Manager or Lender is legally entitled to complete, execute and deliver such documentation and in such Person's judgment such completion, execution or submission would not materially prejudice the legal position of such Person.

(h) Each Borrower and each Guarantor shall pay all Non-Excluded Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

2.19 Indemnity. Each Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense that such Lender may sustain or incur as a consequence of (a) default by any Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after such Borrower has given a notice requesting the same in accordance with the provisions of this Agreement (whether as a result of a Stop Funding Notice or otherwise), (b) default by any Borrower in making any prepayment after such Borrower has

given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to Borrowers by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and Letters of Credit and all other amounts payable hereunder.

2.20 Illegality. Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, then (a) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such or convert Base Rate Loans to Eurodollar Loans, shall forthwith be canceled and (b) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrowers shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.19.

2.21 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.17, 2.18 or 2.20 with respect to such Lender, it will, if requested by Borrowers, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations or rights of any Borrower or Lender pursuant to Sections 2.17, 2.18 or 2.20.

2.22 Loss Proceeds.

(a) All Loss Proceeds received by the Companies at any time shall be (i) received in trust for the Administrative Agent, (ii) shall be segregated from other funds of the Companies, and (iii) subject to clause (d) of this Section, paid over to the Administrative Agent in the same form as received (with any necessary endorsement).

(b) All Loss Proceeds received by the Companies or the Administrative Agent prior to the Opening Date shall be remitted by the Companies or the Administrative Agent, as applicable, to the Resort Loss Proceeds Account, and the release of such Loss Proceeds to the Resort Payment Account shall be controlled solely by the terms of the Disbursement Agreement.

(c) Following the Opening Date, subject to clause (d) below, all Loss Proceeds received by the Companies shall be applied to the prepayment of the Obligations in accordance with Sections 2.11 and 2.23, unless, each of the following conditions are satisfied or waived by the Required Lenders (subject to the last proviso hereof) within 30 Banking Days after receipt of such Loss Proceeds, in which event such amounts shall be made available by the Administrative Agent for application to the repair or restoration of the Project:

(i) such damage or destruction or Event of Loss does not constitute the destruction of all or substantially all of the Project;

(ii) no Default or Event of Default has occurred and is continuing (other than a Default or an Event of Default resulting solely from such damage or destruction or Event of Loss) and after giving effect to any proposed repair and restoration, no Default or Event of Default will result from such damage or destruction or proposed repair and restoration or Event of Loss;

(iii) Borrowers certify, and the Administrative Agent determines after notice to the Lenders that repair or restoration of the Project to a condition substantially similar to the condition of the Project immediately prior to the event or events to which the relevant Loss Proceeds, as the case may relate, is technically and economically feasible within a twelve-month period and that a sufficient amount of funds is or will be available to Borrowers to make such repairs and restorations (subject at all times to Section 7.7);

(iv) Borrowers deliver to the Administrative Agent a plan describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith (the "Repair Plan"), in form and substance reasonably satisfactory to the Administrative Agent after notice to the Lenders and in any event providing for the completion of all associated work prior to the Revolving Termination Date;

(v) Borrowers certify, and the Administrative Agent determines after notice to the Lenders, that a sufficient amount of funds is or will be available to Borrowers to make all payments on Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in Section 7.1 during such repair period;

(vi) no Permit is necessary to proceed with the repair and restoration of the Project which the Administrative Agent reasonably determines the Companies will not be able to obtain as and when required;

(vii) the Administrative Agent shall receive such additional title insurance, title insurance endorsements, mechanic's lien waivers, certificates, opinions or other matters as it may reasonably request after notice to the Lenders as necessary or appropriate in connection with such repairs or restoration of the Project or to preserve or protect the Lenders' interests hereunder and in the applicable Collateral; and

(viii) the proposed repair or restoration is permitted by the Second

Mortgage Indenture:

provided that the Administrative Agent shall be entitled to waive any of the conditions set forth in clauses (i) through (viii) above in its sole discretion as to any Loss Proceeds in an amount which is not greater than \$50,000,000.

(d) Notwithstanding clause (c) of this Section, if any Event of Loss (or series of related Events of Loss) occurs with respect to which Loss Proceeds received by the Companies is less than \$10,000,000 then, unless any Default or Event of Default has occurred and remains continuing, such Loss Proceeds shall be released to the Companies without satisfaction of the conditions set forth above in clause (c). If an Event of Default shall have occurred and be continuing (other than a Default or an Event of Default resulting solely from the Event of Loss giving rise to the receipt of such Loss Proceeds (but in any event including any Default or Event of Default arising for failure to satisfy the terms of Sections 7.1 or 8(a)), then any provisions of this Section 2.22 to the contrary notwithstanding, the Administrative Agent may require the application of the resulting Loss Proceeds (i) to the cure of such Event of Default (with any remaining Loss Proceeds applied as provided in this Section 2.22), or (ii) if such Event of Default cannot be cured, toward payment of all other Obligations in connection with exercise of the Lenders' remedies pursuant to Section 8.

2.23 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 12:00 Noon on the date specified herein. The Administrative Agent will promptly distribute to each Lender its applicable percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's lending office in accordance with clauses (b), (c) and (d) below. All payments received by the Administrative Agent after 12:00 Noon shall be deemed received on the next succeeding Banking Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrowers shall come due on a day other than a Banking Day, payment shall be made on the next following Banking Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Each borrowing by Borrowers from the Lenders hereunder, each payment by Borrowers on account of any commitment fee and any reduction of the Commitments of the Lenders shall be made pro rata according to the respective Delay Draw Term Loan Percentages, Revolving Credit Percentages or Conversion Term Loan Percentages, as the case may be, of the relevant Lenders. Subject to Section 2.23(d), each payment (other than prepayments) in respect of principal or interest in respect of the Loans, and each payment in respect of fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders pro rata according to the respective amounts then due and owing to the Lenders. The application of any mandatory prepayment pursuant to this Section 2.23 shall be made, first, to Base Rate Loans and, second, to Eurodollar Loans.

(c) Each payment (including each prepayment) of Term Loans shall be:

(i) allocated to the Initial Term Loans and the Delay Draw Term Loans pro rata based on the outstanding principal amount of the Term Loans;

(ii) applied to the installments due in respect of the Term Loans (including the final payments on the Term Loan Termination Date), (A) pro rata based on the remaining outstanding principal amount of such installments in the case of mandatory prepayments required pursuant to Section 2.11(a)(vi) and (B) in the inverse order of the scheduled maturities of such installments in the case of all other mandatory prepayments.

Amounts prepaid on account of the Term Loans may not be reborrowed.

(d) Each payment (including each prepayment) by Borrowers on account of principal of and interest on the Revolving Loans shall be made pro rata according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders. Each payment in respect of Reimbursement Obligations in connection with any Letter of Credit shall be made to the Issuing Lender.

(e) Funding by Lenders; Presumption by Administrative Agent.

(i) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Eurodollar Loans (or, in the case of any Base Rate Loans, prior to 11:00 A.M. on the date of such borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Loan, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.4 (or, in the case of a Base Rate Loan, that such Lender has made such share available in accordance with and at the time required by Section 2.4) and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Loan available to the Administrative Agent, then the applicable Lender and Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrowers, the interest rate applicable to Base Rate Loans. If Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to Borrowers the amount of such interest paid by Borrowers for such period. If such Lender pays its share of the applicable Loan to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Loan. Any payment by Borrowers shall be without prejudice to any claim any Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent.

Unless the Administrative Agent shall have received notice from Borrowers prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that Borrowers will not make such payment, the Administrative Agent may assume that Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the appropriate Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if Borrowers have not in fact made such payment, then each of the appropriate Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate, determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(iii) Conclusive Presumption. A notice of the Administrative Agent to any Lender or Borrowers with respect to any amount owing under this subsection (e) shall be conclusive, absent manifest error.

(f) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to Borrowers by the Administrative Agent because the conditions to the applicable extensions of credit set forth in Section 5 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(g) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.5(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.5(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.5(c).

(h) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(i) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of

principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.24 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by Borrowers pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to any Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

SECTION 3. LETTERS OF CREDIT

3.1 The L/C Commitment.

(a) Subject to the terms and conditions set forth herein, (A) the Issuing Lender agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 3 (1) from time to time on any Banking Day during the L/C Commitment Period, to issue Letters of Credit for the account of Borrowers, and to amend Letters of Credit previously issued by it, in accordance with this Section 3, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of Borrowers and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) prior to the Exhaustion of the Second Mortgage Proceeds Account, the L/C Obligations shall not exceed \$50,000,000, (x) the aggregate amount of the Available Revolving Commitments is greater than or equal to zero, (y) the aggregate outstanding amount of the Revolving Loans of any Revolving Lender, plus such Lender's applicable Revolving Credit Percentage of the outstanding amount of all L/C Obligations, plus such Lender's applicable Revolving Credit Percentage of the outstanding amount of all Swing Line Loans shall not exceed such Lender's Revolving Commitment, and (z) the L/C Obligations shall not exceed the L/C Commitment. Each request by Borrowers for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. It is understood and agreed that Bank of America letter of credit no. 3087239 issued in favor of Tomorrow 33 Convention in the face amount of \$117,630, having an expiration date of 12/14/07 shall be deemed outstanding under this Agreement.

(b) The Issuing Lender shall not issue any Letter of Credit if:

(i) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Required Facility Lenders with respect to the Revolving Credit Facility have approved such expiry date; or

(ii) the expiry date of such requested Letter of Credit would occur after the L/C Commitment Period, unless all the Revolving Lenders have approved such expiry date.

(c) The Issuing Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of

Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(ii) the issuance of such Letter of Credit would violate one or more policies of the Issuing Lender applicable to letters of credit generally;

(iii) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial Letter of Credit, or \$500,000, in the case of a standby Letter of Credit;

(iv) such Letter of Credit is to be denominated in a currency other than Dollars; or

(v) a default of any Lender's obligations to fund under Section 3.3 exists or any Lender is at such time a Defaulting Lender hereunder, unless the Issuing Lender has entered into satisfactory arrangements with Borrowers or such Lender to eliminate the Issuing Lender's risk with respect to such Lender.

(d) The Issuing Lender shall not amend any Letter of Credit if the Issuing Lender would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(e) The Issuing Lender shall be under no obligation to amend any Letter of Credit if (i) the Issuing Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(f) The Issuing Lender shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Issuing Lender shall have all of the benefits and immunities (i) provided to the Administrative Agent in Section 9 with respect to any acts taken or omissions suffered by the Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Section 9 included the Issuing Lender with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Issuing Lender.

3.2 Procedures for Issuance and Amendment of Letters of Credit.

(a) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrowers delivered to the Issuing Lender (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of Borrowers. Such Letter of Credit Application must be received by the Issuing Lender and the Administrative Agent not later than 11:00 A.M. at least two Banking Days (or such later date and time as the Administrative Agent and the Issuing Lender may agree

in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Banking Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit; (viii) with respect to Letters of Credit to be used in connection with the payment of Project Costs the satisfaction of the conditions set forth in Section 3.4 of the Disbursement Agreement; and (ix) such other matters as the Issuing Lender may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Lender (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Banking Day); (C) the nature of the proposed amendment; and (D) such other matters as the Issuing Lender may require. Additionally, Borrowers shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Issuing Lender or the Administrative Agent may require.

(b) Promptly after receipt of any Letter of Credit Application, the Issuing Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from Borrowers and, if not, the Issuing Lender will provide the Administrative Agent with a copy thereof. Unless the Issuing Lender has received written notice from any Revolving Lender, the Administrative Agent or Borrowers, at least one Banking Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained Section 3.4 of the Disbursement Agreement (or, to the extent of Letters of Credit not supporting the payment of Project Costs, the conditions in Section 5.3) shall not then be satisfied, then, subject to the terms and conditions hereof, the Issuing Lender shall, on the requested date, issue a Letter of Credit for the account of Borrowers or enter into the applicable amendment, as the case may be, in each case in accordance with the Issuing Lender's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Lender a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(c) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to a nominating bank with respect thereto or to the beneficiary thereof, the Issuing Lender will also deliver to Borrowers and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

3.3 Drawings and Reimbursements; Funding of Participations.

(a) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Issuing Lender shall notify Borrowers and the

Administrative Agent thereof. Not later than 11:00 A.M. on the date of any payment by the Issuing Lender under a Letter of Credit, or if any such payment is made after 11:00 A.M. on or before 11:00 A.M. of the next Banking Day (each such date, an "Honor Date"):

(i) if such Letter of Credit was issued to support the payment of Project Costs, to the extent of any funds contained in the Bank Proceeds Account, the Administrative Agent shall debit the Bank Proceeds Account for the amount of such drawing and apply such amount to the reimbursement of the Letter of Credit;

(ii) to the extent that sufficient funds to reimburse such payment are not present in the Bank Proceeds Account (to the extent that such Letter of Credit was issued to support the payment of Project Costs) or Borrowers do not otherwise timely reimburse the Issuing Lender from other available sources, Borrowers shall be deemed to have requested the making of a Revolving Loans which are Base Rate Loans in the amount of such payment.

The Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of any Revolving Loans required pursuant to clause (ii) above and such Revolving Lender's applicable Revolving Credit Percentage thereof. In any such event, Borrowers shall be deemed to have requested a Revolving Loan of Base Rate Loans to be disbursed on the Honor Date in the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.4 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Commitments. Any notice given by the Issuing Lender or the Administrative Agent pursuant to this Section 3.3(a) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(b) Each Revolving Lender shall upon any notice pursuant to Section 3.3(a) make funds available to the Administrative Agent for the account of the Issuing Lender at the Administrative Agent's Office in an amount equal to its applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Banking Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 3.3(c), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Issuing Lender.

(c) With respect to any Unreimbursed Amount that is not fully refinanced by a borrowing of Revolving Loans pursuant to Section 3.3(a) for any reason, Borrowers shall be deemed to have incurred from the Issuing Lender an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate set forth in Section 2.14(c). In such event, each Revolving Lender's payment to the Administrative Agent for the account of the Issuing Lender pursuant to Section 3.3(b) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 3.3.

(d) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this Section 3.3 to reimburse the Issuing Lender for any amount drawn under any Letter of Credit, interest in respect of such Lender's applicable Revolving Credit Percentage of such amount shall be solely for the account of the Issuing Lender.

(e) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the Issuing Lender for amounts drawn under Letters of Credit, as contemplated by this Section 3.3, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Issuing Lender, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrowers to reimburse the Issuing Lender for the amount of any payment made by the Issuing Lender under any Letter of Credit, together with interest as provided herein.

(f) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 3.3 by the time specified in Section 3.3(b), the Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Issuing Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Issuing Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Loan or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the Issuing Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 3.3(f) shall be conclusive absent manifest error.

3.4 Repayment of Participations.

(a) At any time after the Issuing Lender has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 3.3, if the Administrative Agent receives for the account of the Issuing Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(b) If any payment received by the Administrative Agent for the account of the Issuing Lender pursuant to Section 3.3(b) is required to be returned under any of the circumstances described in Section 10.20 (including pursuant to any settlement entered into by the Issuing Lender in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the Issuing Lender its applicable Revolving Credit Percentage thereof

on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

3.5 Obligations Absolute. The obligation of Borrowers to reimburse the Issuing Lender for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (a) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (b) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (c) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (d) any payment by the Issuing Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or
- (e) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, provided, in each case, that any action taken by the Issuing Lender with respect to the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of the Issuing Lender, or a discharge of, any Borrower or any of their Subsidiaries.

Borrowers shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrowers' instructions or other irregularity, Borrowers will promptly notify the Issuing Lender. Borrowers shall be conclusively deemed to have waived any such claim against the Issuing Lender and its correspondents unless such notice is given as aforesaid.

3.6 Role of Issuing Lender. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the Issuing Lender shall not have any responsibility

to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Lender, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Facility Lenders with respect to the Revolving Credit Facility, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrowers' pursuing such rights and remedies as they may have against the beneficiary or transferee at law, under any custom or practice, or under any other agreement. None of the Issuing Lender, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Lender shall be liable or responsible for any of the matters described in clauses (a) through (c) of Section 3.5; provided, however, that anything in such clauses to the contrary notwithstanding, Borrowers may have a claim against the Issuing Lender, and the Issuing Lender may be liable to Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrowers which Borrowers prove were caused by the Issuing Lender's willful misconduct or gross negligence or the Issuing Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Issuing Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

3.7 Cash Collateral. Upon the request of the Administrative Agent, (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of end of the L/C Commitment Period, any L/C Obligation for any reason remains outstanding, Borrowers shall, in each case, immediately Cash Collateralize the then outstanding amount of all L/C Obligations. Section 8 sets forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 3.7, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Lender and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. Each Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person

other than the Administrative Agent or that the total amount of such funds is less than the aggregate outstanding amount of all LC Obligations, Borrowers will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate outstanding amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Requirements of Law, to reimburse the Issuing Lender.

3.8 Applicability of ISP and UCP. Unless otherwise expressly agreed by the Issuing Lender and Borrowers when a Letter of Credit is issued, (a) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

3.9 Letter of Credit Fees. Borrowers shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its applicable Revolving Credit Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the Revolving Credit Facility times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.3. Letter of Credit Fees shall be (i) due and payable on the first Banking Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the expiry date of such Letter of Credit and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Facility Lenders with respect to the Revolving Credit Facility, while any Event of Default exists, all Letter of Credit Fees shall accrue at the rate set forth in Section 2.14(c).

3.10 Fronting Fee and Documentary and Processing Charges Payable to Issuing Lender. Borrowers shall pay directly to the Issuing Lender for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate specified in the Administrative Agent Fee Letter, computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between Borrowers and the Issuing Lender, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in the Administrative Agent Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Banking Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the expiry date of such Letter of Credit and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the

amount of such Letter of Credit shall be determined in accordance with Section 1.3. In addition, Borrowers shall pay directly to the Issuing Lender for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Issuing Lender relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

3.11 Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

SECTION 4. REPRESENTATIONS AND WARRANTIES

Each Borrower hereby represents and warrants to the Administrative Agent and each Lender that (i) as of the Closing Date, (ii) as of the date of the making of each Direct Loan, and (iii) as of the date of the and the issuance or amendment of each Letter of Credit following the Opening Date (other than to the extent issued to support or finance Project Costs pursuant to the Disbursement Agreement):

4.1 Financial Condition.

(a) The audited consolidated balance sheets of Parent and its consolidated Subsidiaries as at December 31, 2006, and the related consolidated statements of income and of cash flows for the Fiscal Year then ended, present fairly in all material respects the consolidated financial condition of Parent and its consolidated Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the Fiscal Year then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the accountants auditing the same, which accountants shall be independent certified public accountants of nationally recognized standing).

(b) As of the Closing Date, Parent and its Subsidiaries do not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the audited financial statements referred to in clause (a) of this Section, other than as set forth in Schedule 4.1. During the period from January 1, 2007 to and including the Closing Date there has been no Disposition by Parent or any of its Subsidiaries of any material part of its business or Property other than as set forth on Schedule 4.1.

(c) Each of the financial statements required pursuant to Section 6.1 present in all material respects the consolidated, and if applicable, consolidating financial condition of the persons described therein, their respective consolidated, and if applicable, consolidating results of operations and their respective consolidated, and if applicable, consolidating cash flows for the period then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the accountants auditing the same, which accountants shall be independent certified public accountants of nationally recognized standing, and disclosed therein and except with respect to interim financials, normal year end audit adjustments).

4.2 No Material Adverse Effect.

(a) As of the Closing Date, since December 31, 2006, there have been no developments or events that, individually or collectively, have had or could reasonably be expected to have a Material Adverse Effect.

(b) As of each date following the Closing Date, since the Closing Date, there have been no developments or events that, individually or collectively, have had or could reasonably be expected to have a Material Adverse Effect.

4.3 Corporate/LLC Existence; Compliance with Law. Each of the Companies (and, as of the Closing Date and as of the execution by any Loan Party of any Loan Document, each such Loan Party):

(a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(b) has the corporate or limited liability company power and authority, as the case may be, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged;

(c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect; and

(d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.4 Corporate Power; Authorization; Enforceable Obligations. Each of the Companies (and, as of the Closing Date and as of the execution by any Loan Party of any Loan Document, each such Loan Party) has the corporate or limited liability company power, as the case may be, and authority, and the legal right, to make, deliver and perform the Loan Documents and the Financing Agreements to which it is a party and to carry out the transactions contemplated thereby and, in the case of Borrowers, to borrow hereunder. Each of the Loan Parties has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Loan Documents and the Financing Agreements to which it is a party and, in the case of Borrowers, to authorize the borrowings and issuances of Indebtedness on the terms and conditions of this Agreement and the other Financing Agreements. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any Person (other than a Loan Party) is required in connection with the borrowings hereunder or with the execution by, delivery by, performance by, validity or enforceability of this Agreement, any of the other Loan Documents and the Financing Agreements against any Loan Party, except (i) consents, authorizations, filings and notices described in Schedule 4.4 or in connection with the Financing Agreements, which consents, authorizations, filings and notices have, unless otherwise indicated on Schedule 4.4, been

obtained or made and are in full force and effect and (ii) the filings and actions referred to in Section 4.19 or as made in connection with the Financing Agreements. Each Loan Document, Financing Agreement and Material Agreement has been duly executed and delivered on behalf of each Loan Party thereto. This Agreement constitutes, and each other Loan Document, Financing Agreement and each Material Agreement upon execution will constitute, a legal, valid and binding obligation of each Loan Party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Legal Bar. The execution, delivery and performance of this Agreement, the other Loan Documents, the Financing Agreements and the Material Agreements, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof (a) will not violate any material Requirement of Law in respect of any of the Companies (or, as of the Closing Date, in respect of any Loan Party) or any material Contractual Obligation of any of the Companies (or, as of the Closing Date, in respect of any Loan Party) in any material respect, and (b) will not result in, or require, the creation or imposition of any Lien on any of the properties or revenues of the Companies pursuant to any material Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents and the Financing Agreements). As of the Closing Date, no Requirement of Law or Contractual Obligation applicable to any of the Companies could, individually or collectively, reasonably be expected to have a Material Adverse Effect.

4.6 No Material Litigation. Except as set forth on Schedule 4.6, as of the Closing Date there is no material litigation, investigation or proceeding of or before any arbitrator or Governmental Authority pending or, to the knowledge of Borrowers, threatened by or against any of the Companies (or, to the knowledge of the Companies, in respect of any Loan Party) or against any of their respective properties or revenues. None of the litigation disclosed on Schedule 4.6 (a) as of the Closing Date, purports to affect or enjoin any of the Financing Agreements or any of the transactions contemplated hereby or thereby, or (b) individually or collectively, could reasonably be expected to have a Material Adverse Effect. There is no reasonable basis to believe that any of the litigation disclosed on Schedule 4.6 will at any time impede the construction of the Project, and there has been no order or decree issued by any tribunal for any such litigation which enjoins or otherwise restricts the construction of the Project. As of the Closing Date, the Companies do not believe that there is any reasonable basis to believe that any of the litigation described on Schedule 4.6 may reasonably be expected to result in a damage award to the plaintiffs thereunder which would constitute an Event of Default hereunder. As of each date following the Closing Date, there are no actions, suits, proceedings, claims or disputes pending or threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Companies that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

4.7 No Default. None of the Companies (nor, as of the Closing Date, any Loan Party) is in default under or with respect to any of its Contractual Obligations in any respect that, individually or collectively, could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

4.8 Ownership of Property; Liens. The Companies are the sole owners of,

legally and beneficially, and have good, marketable and insurable title to the Retained Site. The Retained Site is not subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than (a) the Reciprocal Easement and Permitted Liens), and (b) claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or assets of the Companies), or to any Lien except for Permitted Liens. Each of the Companies are the sole owners of, legally and beneficially, and has good, marketable and insurable title to, their respective Properties other than the Unrecorded Leases, and none of such Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or assets of the Companies, taken as a whole), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.

4.9 Intellectual Property.

(a) The Companies own, or are licensed to use or otherwise have the right to use in the manner described in the Intellectual Property License Agreement, the "Fontainebleau" name and all other Intellectual Property (other than that which may be subsequently acquired or licensed in the ordinary course of business) which is material to the conduct of their business, taken as a whole, as currently and contemplated to be conducted, including all trademarks and other Intellectual Property reasonably necessary for their operations at the Project. As of the Closing Date, no claim has been asserted or is pending by any Person challenging or questioning the ownership or use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor as of the Closing Date do the Companies know of any valid basis for any such claim. The use by each of the Companies of such Intellectual Property does not infringe on the rights of any Person which could reasonably be expected to have a Material Adverse Effect.

(b) As of the Closing Date, Schedule 4.9 (i) identifies each of the trademarks, service marks and trade name applications and registrations currently registered by or otherwise held, directly or indirectly, by each of the Companies or which each of the Companies has a non-exclusive right to use (including, without limitation, any Intellectual Property related to or otherwise associated with the Companies' use of the "Fontainebleau" name) and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration. As of the Closing Date, the Companies own no other material registered intellectual property.

4.10 Taxes.

(a) Each of the Companies has filed, or caused to be filed, all federal, state, Clark County and other material 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 Companies has paid all taxes shown to be due and payable on such returns and all other material taxes and assessments payable by it, to the extent the same

have become due and payable, other than (x) those taxes that it is contesting in good faith and by appropriate proceedings, and (y) taxes that are not yet due, with respect to each of which it has established reserves that are adequate for the payment thereof and as are required by GAAP.

(b) There are no Liens for Taxes on any of the Properties of any of the Companies, other than Liens permitted pursuant to Section 7.3.

4.11 Federal Regulations. None of the Companies are engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulations T, U or X of the Board), and no part of the proceeds of the Loans or the Companies' revenues from the Project will be used by the Companies to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or otherwise in violation of Regulations T, U or X.

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

4.13 ERISA. Either (a) there are no Plans or Multiemployer Plans for the Companies or any Controlled Group Member or (b) except as could not reasonably be expected to have a Material Adverse Effect (i) the Companies and each Controlled Group Member have fulfilled in all material respects 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 Companies nor any Controlled Group Member have 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).

4.14 Investment Company Act; Other Regulations. No Company is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. No Company is subject to regulation under any federal or state statute or regulation which may limit its ability to incur Indebtedness, other than the Nevada Gaming Laws, or which may render all or any portion of the Obligations unenforceable. Incurrence of the Obligations by the Companies (and, as of the Closing Date, by the other Loan Parties) under the Loan Documents complies with all applicable provisions of the Nevada Gaming Laws, subject to any informational filings or reports required by Nevada Gaming Commission Regulation Section 8.130.

4.15 Subsidiaries. As of the Closing Date, each of the Subsidiaries of Parent are shown on Exhibit K to the Disbursement Agreement and neither Parent nor any other Loan Party have any Subsidiaries or owns the whole or any part of the issued share capital or other

direct ownership interest of any company or corporation or other Person except as shown on Exhibit K to the Disbursement Agreement.

4.16 Use of Proceeds; Letters of Credit.

(a) The proceeds of the extensions of credit under this Agreement made prior to the Opening Date shall be applied in the manner contemplated by the Disbursement Agreement.

(b) The proceeds of the extensions of credit made after the Opening Date shall be used for general business purposes of the Companies; provided, that such general business purposes are in furtherance of, or associated with, the Permitted Business of the Companies; provided, further, that to the extent proceeds of extensions of credit made after the Opening Date but prior to the Final Completion Date are to be applied to Project Costs, such proceeds shall be made solely out of Disbursement Agreement Loans applied to Project Costs in accordance with the Disbursement Agreement.

4.17 Environmental Matters.

(a) The Companies: (i) are within the period of all applicable statutes of limitation have been, in material compliance with all applicable material Environmental Laws; and (ii) reasonably believe that material compliance with all applicable material Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained.

(b) To the knowledge of the Companies, and except as set forth in the Phase I Report, Hazardous Substances are not present at, on, under, in, or about the Site, or at any other location (including, without limitation, any location to which Hazardous Substances have been sent for re-use or recycling or for treatment, storage, or disposal) which could reasonably be expected to:

(i) give rise to any material liability of any of the Companies under any applicable Environmental Law, or otherwise to result in costs to any of the Companies, in either case that could reasonably be expected to have a Material Adverse Effect;

(ii) materially interfere with any of the Companies' continued operations, taken as a whole; or

(iii) materially impair the fair saleable value of the Retained Site.

(c) There is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law to which any of the Project Entities are, or to the knowledge of the Companies will be, named as a party that is pending or, to the knowledge of the Companies, threatened, in the case of each date after the Closing Date, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) The Companies have not received any written request for information, or

been notified that it is a potentially responsible party, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Companies have not entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law or Environmental Claim.

(f) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, none of the Companies has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with respect to any Hazardous Substances.

(g) Except as could not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect or as set forth in the Phase I Report:

(i) Hazardous Materials Activities are not presently occurring, and, to the Companies' knowledge, have not previously occurred, at, on, under, in or about the Site; and

(ii) none of the Companies have ever engaged in any Hazardous Materials Activities at the Site.

4.18 Accuracy of Information.

(a) No statement or information contained in this Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Arrangers, the Administrative Agent, the Managers or the Lenders or any of them, by or on behalf of the Parent or any Company for use in connection with the transactions contemplated by this Agreement or the other Loan Documents (other than the materials described in clause (b)), when taken as a whole, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Agreement), any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which such statements were made.

(b) The projections, estimates and other forward looking statements and estimates, and the pro forma financial information contained in the materials referenced above (including, without limitation, the Projections) are based upon good faith estimates and assumptions believed by management of Parent and the Companies to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(c) As of the Closing Date, there are no facts known to the Companies that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and written statements furnished to the Arrangers, the Administrative Agent, the Managers and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19 Security Documents.

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and proceeds and products thereof. In the case of the Pledged Stock, when any stock or membership certificates representing such Pledged Stock are delivered to the Administrative Agent with a corresponding endorsement, and in the case of the other Collateral (other than Non-Perfection Collateral (as defined in the Guarantee and Collateral Agreement)) described in the Guarantee and Collateral Agreement, when financing statements in appropriate form are filed in the offices specified on Schedule 4.19(a)-1 and such other filings and actions as are specified on Schedule 3 to the Guarantee and Collateral Agreement are made and taken, the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Companies in such Collateral and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens). Schedule 4.19(a)-2 lists as of the Closing Date each UCC Financing Statement that names any Company as debtor and will remain on file after the Closing Date. Notwithstanding the foregoing, it is acknowledged that, pursuant to the Nevada Gaming Laws when the Companies are licensed by or registered with Nevada Gaming Authorities, the approval of the pledge of the Equity Interests in the Companies by the Nevada Gaming Authorities will be required in order for such pledge of the Equity Interests in the Companies to remain in effect and that when the Companies are licensed by or registered with Nevada Gaming Authorities foreclosure upon the Equity Interests and certain other assets of the Companies may only be accomplished in accordance with the requirements of Nevada Gaming Laws.

(b) The Deed of Trust is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable Lien on the Retained Site, and constitutes a fully perfected Lien on as security for the Obligations, subject only to Permitted Liens and prior and superior in right to any other Lien (except Permitted Liens).

(c) The Intellectual Property Security Agreements are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Intellectual Property Collateral described therein and proceeds and products thereof. Upon the filing of (i) the Intellectual Property Security Agreements in the appropriate indexes of the United States Patent and Trademark Office relative to patents and trademarks, and the United States Copyright Office relative to copyrights, together with provision for payment of all requisite fees, and (ii) financing statements in appropriate form for filing in the offices specified on Schedule 4.19(c) (which financing statements have been

duly completed and filed in accordance with applicable Requirements of Law) the Intellectual Property Security Agreements shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Companies in the Intellectual Property Collateral and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

(d) The Guarantee and Collateral Agreement and the Control Agreements together are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Accounts described therein and proceeds and products thereof. Upon the execution of the Guarantee and Collateral Agreement and the Control Agreements, the Guarantee and Collateral Agreement and the Control Agreements shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Companies in the Accounts and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

4.20 Solvency. On the Closing Date, after giving effect to (i) the incurrence of all Indebtedness under by the Financing Agreements, and (ii) the use of the proceeds of such Indebtedness (including, without limitation, the use of proceeds of the extensions of credit made by the Lenders hereunder), the Companies are Solvent, when taken as a whole. Following the Closing Date, the Companies taken as a whole are Solvent.

4.21 Second Mortgage Notes. The issuance and sale of the Second Mortgage Notes, either (a) have been registered or qualified under applicable federal and state securities laws or (b) are exempt therefrom.

4.22 Regulation H. No portion of the Site is in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

4.23 Insurance. Each of the Companies is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with Section 6.5; and none of the Companies has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

4.24 Performance of Agreements; Material Agreements. None of the Companies (nor, as of the Closing Date, any Loan Party) is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, in each case, except where the consequences of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect. Schedule 4.24 contains a true, correct and complete list of all the Material Agreements in effect on the Closing Date.

4.25 The Site.

(a) The Site and the Project comply with all applicable building and zoning

ordinances and codes in all material respects. The Retained Site and the Companies' operations at the Project comply with all Insurance Requirements non-compliance with which may reasonably be expected to invalidate the related insurance. None of the occupiers of the Retained Site are non-conforming users thereof, except as could not reasonably be expected to have a Material Adverse Effect.

(b) No Taking has been commenced or, to Borrowers' knowledge, is contemplated with respect to all or any portion of the Retained Site (or, as of the Closing Date, any portion of the entire Site) or for the relocation of roadways providing access thereto except, in respect of such action following the Closing Date, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

(c) As of the Closing Date there are no current, pending or, to Borrowers' knowledge, proposed special or other assessments for public improvements or otherwise affecting the Site, nor as of the Closing Date are there any contemplated improvements to the Site that may result in such special or other assessments. There are no current, pending or, to Borrowers' knowledge, proposed special or other assessments for public improvements or otherwise affecting the Retained Site, nor are there any contemplated improvements to the Retained Site 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 Companies.

(d) None of the Companies has suffered, permitted or initiated the joint assessment of the Retained Site with any other real property constituting a separate tax lot. As of the Closing Date, the Site has been properly subdivided, and for all purposes may be mortgaged, conveyed and otherwise dealt with as separate legal lots or parcels. The creation of the Retail Air Space Lease (and, when created, any subsequent fee interest into which the Retail Air Space Lease may be converted) does not violate any applicable subdivision map act requirements.

(e) The use being made of the Retained Site is in material conformity with the certificate of occupancy (if any) and/or such other permits, licenses, variances and certificates any other reciprocal easement agreements, restrictions, covenants or conditions affecting the Retained Site.

(f) There are no outstanding options to purchase or rights of first refusal or other than Permitted Liens, restrictions on transferability affecting the Retained Site.

(g) As of each date following the Opening Date, the Site has adequate rights of access to public ways and is served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer and storm drain facilities, in each case as necessary to permit the Project to be developed and operated on the Site. All roads necessary for the utilization of the Site for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of the Site.

(h) Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no building or structure on the Site, nor any or equipment on the Retained Site, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

(i) As of the Closing Date, the Companies have not entered into any Space Leases other than as set forth on Schedule 4.25.

4.26 Permits. Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, as of each date following the Opening Date:

(a) each of the Companies has obtained and holds all Permits required as of the date this representation is deemed made in respect of the Retained Site and for any other Property otherwise operated by or on behalf of, or for the benefit of, such Person and for the operation of its business; and

(b) all such Permits are in full force and effect, and each of the Companies has performed and observed all requirements of such Permits (to the extent required to be performed by the date this representation is deemed made).

4.27 Utilities. All gas, water and electrical interconnection and utility services necessary for the operation of the Project for its intended purposes are or will be available at the Site as and when necessary for the operation of the Project.

4.28 Fiscal Year. The fiscal year of each of the Companies ends on December 31 of each calendar year.

4.29 Transactions with Affiliates. As of the Closing Date, (a) there is no material binding contract or agreement between the Companies, on the one hand, and Affiliates of the Company (including Parent and its other Subsidiaries), on the other hand, which is not described on Schedule 4.29, (b) there is no material continuing obligation of the Companies to make payments to any of their respective Affiliates which is not contained in the agreements described on Schedule 4.29 and (c) to the best knowledge of the Companies, each of the material costs contemplated to be incurred by the Companies under the Affiliate Agreements described on Schedule 4.29 are, to the extent contemplated on the Closing Date to be payable through the Opening Date, included in the Resort Budget, other than (i) those which are subject to subordination pursuant to the Affiliate Subordination Agreement, and (ii) those that will be payable by the Companies under the Affiliate Agreements out of funds other than the Resort Sources.

SECTION 5. CONDITIONS PRECEDENT

5.1 Conditions to Closing Date. The occurrence of the Closing Date is subject to the execution and delivery on or before the Closing Date of each of the instruments, documents and agreements listed on Schedule 1.1, the concurrent issuance of the Second Mortgage Notes and the closing of the Retail Facility, and the satisfaction of each of the other conditions precedent described in Section 3.1 of the Disbursement Agreement (unless waived in writing by the Administrative Agent with the consent of all the Lenders). Without limiting the generality of the provisions of the last paragraph of Section 9.3, for purposes of determining compliance with the conditions specified in this Section 5.1 or Section 3.1 of the Disbursement Agreement, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder or thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless

the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.2 Conditions to Extensions of Credit controlled by Disbursement Agreement. The agreement of each Lender to make Disbursement Agreement Loans and to issue Letters of Credit for the payment of Project Costs pursuant to Section 3.4 of the Disbursement Agreement, is subject only to the satisfaction of the following conditions precedent:

(a) **Notice of Borrowing.** Borrowers shall have submitted a Notice of Borrowing specifying the amount and Type of the Loans requested, and the making thereof shall be in compliance with the applicable provisions of Section 2 of this Agreement.

(b) **Letters of Credit.** In the case of Letters of Credit, the procedures set forth in Section 3.4 of the Disbursement Agreement shall have been complied with.

(c) **Drawdown Frequency.** Except for Loans made pursuant to Section 3 with respect to Reimbursement Obligations, Loans made pursuant to this Section shall be made no more frequently than once every calendar month unless the Administrative Agent otherwise consents in its sole discretion.

5.3 Conditions to Extensions of Credit following the Opening Date (except for Reserved Amounts). The agreement of each Lender to make Direct Loans, the obligation of the Swing Line Lender to make Swing Line Loans, and the obligation of the Issuing Lender to make each Letter of Credit (other than those requested pursuant to Section 3.4 of the Disbursement Agreement for the financing of Project Costs), is subject to the satisfaction of the following conditions precedent:

(a) **Notice.** Borrowers shall have delivered (i) in the case of the borrowing of Revolving Loans, a Notice of Borrowing to the Administrative Agent in accordance with the procedures specified in Section 2.4(b), (ii) in the case of the issuance of Letters of Credit, a Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith to the Issuing Lender in accordance with the procedures specified in Section 3.2 and (iii) in the case of the borrowing of Swing Line Loans, Borrowers shall have complied with the provisions of Section 2.6(a).

(b) **Representations and Warranties.** Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

(c) **No Default.** No Default or Event of Default shall have occurred and be continuing on such date or immediately after giving effect to the extensions of credit requested to be made on such date.

Each borrowing of Loans by and issuance of a Letter of Credit on behalf of Borrower under this Section 5.3 shall constitute a representation and warranty by Borrowers as of the date thereof

that the conditions contained in this Section 5.3 have been satisfied.

SECTION 6. AFFIRMATIVE COVENANTS

Each Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding (other than Letters of Credit that have been Cash Collateralized) or any Loan or other amount is owing to any Lender, any Arranger or the Agent hereunder or under any other Loan Document, Borrowers shall and shall cause each of the other Companies to, it being understood and agreed that the covenants set forth in this Section 6 shall be of continuous application unless expressly stated below:

Lender: 6.1 Financial Statements. Furnish to the Administrative Agent and each

(a) Companies.

(i) As soon as available, but in any event not later than 120 days after the end of each Fiscal Year, a copy of the audited consolidated balance sheet of Las Vegas Holdings as at the end of such Fiscal Year and the related audited consolidated statement of income and of cash flows for such Fiscal Year, with comparative figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception (other than any qualification for periods on or prior to the Opening Date that addresses the development stage nature of the Companies), or qualification arising out of the scope of the audit, by independent certified public accountants of nationally recognized standing; and

(ii) As soon as available, but in any event not later than 45 days after the end of each Fiscal Quarter (or, in the case of the Fiscal Quarter ending March 31, 2007, 90 days thereafter), the unaudited consolidated balance sheet of Las Vegas Holdings and the related unaudited consolidated statement of income and of cash flows for such Fiscal Quarter and the portion of the Fiscal Year through the end of such Fiscal Quarter, in each case setting forth, in comparative form the figures for the previous Fiscal Year, certified by a Responsible Officer of the Companies as being fairly stated in all material respects (subject to normal year end audit adjustments and the absence of footnotes).

(b) Parent. Subject to clause (e) of this Section:

(i) As soon as available, but in any event not later than 120 days after the end of each Fiscal Year (or, following the release of the Parent Guaranty, when available and to the extent prepared), a copy of the audited consolidated balance sheet of Parent as at the end of such Fiscal Year and the related audited consolidated statement of income and of cash flows for such Fiscal Year, reported on by independent certified public accountants of nationally recognized standing (and, prior to the release of the Parent Guaranty, without a "going concern" or like qualification or exception (other than any qualification for periods on or prior to the Opening Date that addresses the development stage nature of the Project Entities), or qualification arising out of the scope

of the audit);

(ii) As soon as available, but in any event not later than 45 days after the end of each Fiscal Quarter (or, in the case of the Fiscal Quarter ending March 31, 2007, 90 days thereafter) (or, following the release of the Parent Guaranty, when available and to the extent prepared), the unaudited consolidated balance sheet of Parent and the related unaudited consolidated statement of income and of cash flows for such Fiscal Quarter and the portion of the Fiscal Year through the end of such quarter, certified by a senior officer of Parent as being fairly stated in all material respects (subject to normal year end audit adjustments and the absence of footnotes), *provided* that, following the release of the Parent Guaranty, Parent shall not be obligated to provide the reports contemplated by this clause (ii) to the extent not prepared in the ordinary course of business;

(c) Turnberry Residential. Subject to clause (e) of this Section, while the Completion Guaranty executed by Turnberry Residential remains in effect:

(i) As soon as available, but in any event not later than 180 days after the end of each fiscal year of Turnberry Residential, a copy of the audited consolidated balance sheet of Turnberry Residential as at the end of such fiscal year and the related audited consolidated statement of income and of cash flows for such fiscal year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by independent certified public accountants of nationally recognized standing; and

(ii) as soon as available, but in any event not later than 45 days after the end of each fiscal quarter of Turnberry Residential, a copy of the statement of cash flows of the Turnberry Residential for such fiscal quarter, certified by a senior officer of Turnberry Residential as being fairly stated in all material respects (subject to normal year end audit adjustments and the absence of footnotes).

(d) as soon as available, but in any event not later than 15 days after the end of each calendar month, a Condo Sales Report and a Retail Leasing Report, *provided* that the requirement of providing Retail Leasing Reports shall be terminated upon the earliest to occur of (i) the delivery of a Retail Leasing Report demonstrating the execution of leases covering 90% of the square feet represented by the Retail Air Space Lease (or the Retail Air Space Parcels) not leased or subleased to the Companies, (ii) the Opening Date, and (iii) the date upon which the Retail Affiliate (any transferee of the entirety of the interests of the Retail Affiliate in respect of the Retail Air Space Parcels or the Retail Air Space Lease) is a Person which is not an Affiliate of the Companies; *provided* that the Companies shall no longer be obligated to deliver Condo Sales Reports following the final consummation of the sale of 100% of the Condo Units.

(e) It is acknowledged and agreed that the financial statements of Turnberry Residential delivered pursuant to Section 6.1(c) may at all times be designated by the Companies as solely for distribution to Lenders which have designated themselves as recipients of "Private Side Information" pursuant to Section 10.2, and that the financial statements of the Parent delivered pursuant to Section 6.1(b) may also be so designated following the release of the

Parent Guaranty.

(f) In the event Parent, Tumberry Residential or Las Vegas Holdings is required to file with the SEC (or successor entity thereto) any Annual Report on Form 10-K or any Quarterly Report on Form 10-Q, Borrowers shall furnish copies of such reports to the Administrative Agent and the Lenders within 10 days after any such filing, and such filings shall be deemed to satisfy the requirements of clauses (a), (b) or (c), as the case may be, above.

(g) All financial statements delivered pursuant to this Section 6.1 shall be complete and correct in all material respects (in the case of quarterly financial statements delivered pursuant to subsections (a)(ii), (b)(ii) or (c)(ii) of this Section 6.1), subject to normal year-end audit adjustments and the absence of footnotes) and shall be prepared in reasonable detail and in accordance with GAAP (in the case of quarterly financial statements delivered pursuant to subsection (a)(ii), (b)(ii) and (c)(ii) of this Section 6.1, subject to normal year-end audit adjustments and the absence of footnotes) applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

Notwithstanding the foregoing provisions of this Section 6.1 audit opinions in respect of Parent and its Subsidiaries and of the Companies which are materially consistent with those delivered by their auditors in respect of the fiscal year ended December 31, 2006 shall be deemed acceptable to the Administrative Agent and the Lenders.

6.2 Certificates; Other Information. Furnish to Administrative Agent:

(a) concurrently with the delivery of the audited financial statements of Las Vegas Holdings referred to in Section 6.1(a)(i), a certificate of the independent certified public accountants reporting on such financial statements in form and substance reasonably acceptable to the Administrative Agent to the effect that (i) their audit examination has included a review of the terms of this Agreement and the other Loan Documents as they relate to accounting matters, (ii) in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default relating to accounting or financial matters, except as specified in such certificate, and (iii) based on their audit examination nothing has come to their attention that causes them to believe that the information contained in the Compliance Certificate is not correct or stated in accordance with the terms of this Agreement;

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1(a)(ii), (i) a certificate of a Responsible Officer of the Companies stating that, to such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate, and (ii) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Companies with the provisions of this Agreement referred to therein as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be;

(c) following the Completion Date, not earlier than 30 days prior to the commencement of each Fiscal Year, and not later than 60 following the beginning of each Fiscal Year, a detailed budget for the Companies for such Fiscal Year, and the related statements of projected cash flow, projected changes in financial position and projected income), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such Fiscal Year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Companies stating that, at the time made, such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within five Banking Days after the same are sent, copies of all financial statements and reports that the Companies send to the holders of any class of their respective debt securities to the extent not previously delivered to the Administrative Agent and, within five Banking Days after the same are filed, either copies of all financial statements and reports that the Companies may make to, or file with, the SEC or electronic notices of such filings;

(e) on the date of the occurrence thereof, notice (and copies thereof in the case such notice is written) that any obligations of the Companies in respect of Indebtedness exceeding an aggregate amount of \$10,000,000 have been accelerated;

(f) promptly upon receipt, copies of all notices provided to any Company or their Affiliates pursuant to any of the Financing Agreements or the Retail Facility relating to material defaults or material delays and promptly upon execution and delivery thereof, copies of all amendments to any of the Financing Agreements or the Retail Facility;

(g) to the extent not included in subsections (a) through (f) above, no later than the date the same are required to be delivered thereunder, copies of all agreements, documents or other instruments (including, without limitation, (i) audited and unaudited, pro forma and other financial statements, reports, forecasts, and projections, together with any required certifications thereon by independent public auditors or officers of any Company or otherwise, (ii) press releases, (iii) statements or reports furnished to any other holder of the securities of any Company, and (iv) regular, periodic and special securities reports) that any Company or Affiliate of a Company is required to provide pursuant to the terms of the Financing Agreements or the Retail Facility;

(h) promptly, and in any event within 30 days of the end of each Fiscal Year after the Completion Date, deliver to the Administrative Agent a certificate substantially in the form of Exhibit I hereto and otherwise in form and substance reasonably satisfactory to the Administrative Agent in consultation with the Insurance Advisor, certifying that the insurance requirements of Section 6.5 have been implemented and are being complied with in all material respects;

(i) within twenty days after the end of each Fiscal Quarter of Las Vegas Holdings, a schedule of all Proceedings involving an alleged liability of, or claims against or affecting, any Project Entity equal to or greater than \$3,000,000, and promptly after request by the Administrative Agent such other information as may be reasonably requested by the

Administrative Agent to enable the Administrative Agent and its counsel to evaluate any of such Proceedings; and

(j) promptly, such additional financial and other information as any Lender may from time to time reasonably request.

Each Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of Parent or any of its Subsidiaries hereunder (collectively, "Fontainebleau Materials") by posting Fontainebleau Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to Parent, any of its Subsidiaries or any of their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Person's securities. Each Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of Fontainebleau Materials that may be distributed to the Public Lenders and that (w) all such Fontainebleau Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Fontainebleau Materials "PUBLIC," Borrowers shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Lender and the Lenders to treat such Fontainebleau Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Parent, any of its Subsidiaries or any of their Affiliates, or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Fontainebleau Materials constitute Information (as defined in Section 10.15), they shall be treated as set forth in Section 10.15); (y) all Fontainebleau Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Fontainebleau Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.3 Payment of Obligations. To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Companies.

6.4 Conduct of Business and Maintenance of Existence, etc. (i) Preserve, renew and keep in full force and effect its corporate or limited liability company existence, (ii) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of subsection (ii) above, to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, and (iii) the Companies shall enforce the material provisions of the Reciprocal Easement Agreement.

6.5 Maintenance of Property; Leases; Insurance.

(a) Keep all material Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Maintain all rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of the Retained Site, 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 Retained Site or its operations.

(c) Comply with the terms of each lease or other grant of real property rights associated with the Retained Site, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where noncompliance therewith could not reasonably be expected to materially and adversely affect or interfere with the ownership, construction or operation of the Retained Site.

(d) At all times maintain in full force and effect the insurance policies and programs listed on Schedule 6.5(d), which policies and programs may be modified from time to time subject to the prior approval of the Administrative Agent in consultation with the Insurance Consultant, which approval shall not be unreasonably withheld, if (i) the insurance policies and programs listed on Schedule 6.5(d) are not then available on commercially reasonable terms and (ii) the resulting coverage is, at the time of the modification, customary for companies engaged in the same or similar business, which are similarly situated, and which have obtained or are then obtaining insurance coverage under similar conditions (including leverage structure) as those then currently applicable to the Companies. In the event that, in accordance with the preceding sentence, the Companies are, at any time or from time to time, permitted to deviate from the insurance policies and programs described in Schedule 6.5(d) and, thereafter, any such requirement set forth in Schedule 6.5(d) becomes available on commercially reasonable terms, the Companies shall promptly procure coverage satisfying such requirement.

(e) Deliver to the Administrative Agent on behalf of the Secured Parties, (i) upon request of any Secured Party from time to time, full information as to the insurance carried, (ii) promptly following receipt thereof, from any insurer, a copy of any notice of cancellation or material change in coverage from that existing on the Closing Date, (iii) forthwith, notice of any cancellation or nonrenewal of coverage received by the Companies, unless such insurance is replaced prior to the cancellation or non-renewal thereof in accordance with Schedule 6.5(d), and (iv) promptly after such information is available to the Companies, full information as to any claim for an amount in excess of \$3,000,000 with respect to any property and casualty insurance policy maintained by the Companies.

(f) Preserve and protect the Lien status of the Deed of Trust and, if any Lien (other than Liens permitted under Section 7.3) is asserted against the Retained Site, promptly give the Administrative Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Administrative Agent.

6.6 Inspection of Property; Books and Records; Discussions. (a) Keep adequate records and books of account in conformity with GAAP, consistently applied, and in

material compliance all applicable Requirements of Law, and (b) subject to any applicable Nevada Gaming Laws restricting such actions, permit representatives of any Lender, coordinated through the Administrative Agent, to visit and inspect any of its properties and examine and, at Borrowers' expense (provided that, unless an Event of Default has occurred and is continuing, Borrowers shall be only be required to reimburse expenses for one such visit by the Administrative Agent per Fiscal Year), make abstracts from any of the books and records of the Companies at any reasonable time and upon reasonable prior notice and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Companies with officers thereof and with their respective independent certified public accountants (provided that a Responsible Officer may be present for any such discussions with independent certified public accountants).

6.7 Notices. Promptly give the Administrative Agent and each Lender notice of:

- (a) the occurrence of any Default or Event of Default;
- (b) any default or event of default (or alleged default) under any Contractual Obligation of any of the Companies that could reasonably be expected to have a Material Adverse Effect;
- (c) upon any officer of the Companies obtaining knowledge thereof, the institution of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting any of the Companies, or any Property of the Companies or the Project (collectively, "Proceedings") not previously disclosed in writing by the Companies to the Lenders that, in any case (A) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect or (B) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or seeks to enjoin or otherwise affect the construction of the Project, or any material development in any such Proceeding, in each case together with such other information as may be reasonably available to the Companies to enable Lenders and their counsel to evaluate such matters;
- (d) the following events, as soon as possible and in any event within 30 days after the Companies know or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, any of the Companies or any Controlled Group Member or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and
- (e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Companies setting forth details of the occurrence referred to therein and stating what action the Companies propose to take with respect thereto.

6.8 Environmental Laws; Permits.

(a) Comply in all material respects with, and use commercially reasonable efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and Environmental Permits, and obtain, maintain and comply in all material respects with, and use best efforts to ensure that all tenants and subtenants obtain, maintain and comply in all material respects with, any and all licenses, approvals, notifications, registrations or Environmental Permits except, in each case, to the extent any non-compliance could not reasonably be expected to result in any material liability to the Companies.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws related to the Retained Site except, in each case, to the extent any non-compliance could not reasonably be expected to result in any material liability to the Companies.

(c) The Administrative Agent may, from time to time and in its reasonable discretion, (i) retain, at Borrowers' expense, an independent professional consultant to review any environmental audits, investigations, analyses and reports relating to Hazardous Substances in respect of the Retained Site prepared by or for any Loan Party and (ii) conduct its own investigation of Hazardous Substances at the Retained Site. For purposes of conducting such a review and/or investigation, the Administrative Agent and its agents, employees, consultants and contractors shall have the right, which unless an Event of Default has occurred and is continuing shall be upon reasonable prior notice, to enter into or onto the Retained Site and to perform such tests on such property (including taking samples of soil and groundwater) as are reasonably necessary in connection therewith. Any such investigation shall be conducted, unless otherwise agreed to by Borrowers, during normal business hours and shall be conducted so as not to unreasonably interfere with the ongoing operations at the Retained Site or to cause any material damage or loss to any Property.

(d) Deliver to the Administrative Agent (i) as soon as practicable following receipt thereof, copies in the Companies' possession or control of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Loan Parties or by independent consultants, governmental authorities or any other Persons, with respect to Environmental Matters at the Retained Site or with respect to any Environmental Claims, (ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (B) any remedial action taken by any Person in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (2) any Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (iii) as soon as practicable following the sending or receipt thereof by the Companies, a copy of any and all written communications with respect to (A) any Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (B) any Release required to be reported to any federal, state or local

governmental or regulatory agency, and (C) any request for information from any governmental agency indicating that such agency is investigating whether the Companies may be potentially responsible for any Hazardous Materials Activity, (iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of property by the Companies that could reasonably be expected to (1) expose the Companies to, or result in, Environmental Claims that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or (2) affect the ability of the Companies to maintain in full force and effect all material Environmental Permits for their respective operations and (B) any proposed action to be taken by the Companies to modify current operations in a manner that could reasonably be expected to subject the Companies to any material additional obligations or requirements under any Environmental Laws that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (v) any notice that any Governmental Authority may condition approval of, or any application for, any material Environmental Permit held by the Companies on terms and conditions that are materially burdensome to the Companies, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such Person, (vi) notice of any actions or proceedings of the types described in Sections 4.17(c) through (c), (vii) as soon as practicable, all material documents submitted to, filed with or received from any Governmental Authority regarding Environmental Permits, and (viii) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent.

6.9 Interest Rate Protection.

(a) Within 180 days after the Closing Date, enter into the Required Hedge Agreement with Persons which are reasonably acceptable to the Administrative Agent as a credit matter, and at all times thereafter maintain the Required Hedge Agreement in effect.

(b) On or prior to the termination of the Required Hedge Agreement, enter into extensions of the tenor of the Required Hedge Agreement (or enter into replacement Hedge Agreements reasonably acceptable to the Administrative Agent from time to time); provided that the initial tenor of any such extension or replacement Hedge Agreement shall not be less than the shorter of (i) two years, (ii) the period of time from such extension or replacement through the Term Loan Termination Date.

6.10 Additional Collateral, Discharge of Liens, etc.

(a) With respect to any Property acquired after the Closing Date by any of the Companies as to which the Administrative Agent does not have a perfected security interest (other than cash and Excluded Assets), subject to compliance with applicable Nevada Gaming Laws and restrictions on the granting of Liens permitted pursuant to Section 7.13, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such Property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such Property (subject to Permitted Liens), including, without limitation, the filing of UCC financing statements in such jurisdictions as may be required by law or as may be requested by the Administrative Agent. In addition to the foregoing, in the event any such

Property acquired after the Closing Date consists of Property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within five Banking Days following the date of such acquisition or such longer time as approved by Administrative Agent) (1) execute and deliver a deed of trust or mortgage, substantially in the form of the Deed of Trust (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Administrative Agent for recording a supplement to an existing mortgage, in either case pursuant to which the Companies grant to the Administrative Agent on behalf of the Secured Parties a Lien on such Property subject only to Permitted Liens, (2) provide the Secured Parties either (A) with title and extended coverage insurance covering such Property in an amount at least equal to the fair market value of such Property, and in any event reasonably consistent with the title and extended coverage insurance covering the Retained Site obtained pursuant to the Disbursement Agreement, along with such other endorsements as the Administrative Agent may reasonably request, it being understood that the provision of title insurance may be limited to the value of any real property and improvements acquired, or may be accomplished without increase as to the amount of coverage by the provision of a "tie-in" endorsement to the Administrative Agent's existing title policies or other similar mechanisms, or (B) to extent the Administrative Agent determines in its sole discretion that the existing title insurance coverage is sufficient to cover such Property, appropriate endorsements or supplements to an existing title policy issued to the Administrative Agent as the Administrative Agent may reasonably request (or in the case of (A) or (B) above, provide the Administrative Agent with a commitment to issue such insurance or endorsements in form and substance reasonably acceptable to Administrative Agent), and (3) execute and/or deliver such other documents or provide such other information and assurances (including opinions) in furtherance thereof as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such Property were part of the Retained Site on the Closing Date.

(b) With respect to any new Subsidiary created or acquired after the Closing Date by the Companies, subject to compliance with Nevada Gaming Laws, promptly (i) execute and deliver to the Administrative Agent such amendments to the Security Documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Equity Interests of such new Subsidiary (subject to Permitted Liens), (ii) deliver to the Administrative Agent the certificates (if any) representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Companies, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and, to the extent applicable, the Intellectual Property Security Agreements and (B) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest (subject to Permitted Liens) in the Collateral described in the Security Documents and, to the extent applicable, the Intellectual Property Security Agreements with respect to such new Subsidiary, the execution and delivery by all necessary Persons of Control Agreements and the filing of UCC financing statements in such jurisdictions as may be required by law or as may be requested by the Administrative Agent, (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the

matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and (v) execute and/or deliver such other documents or provide such other information as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such new Subsidiary existed on the Closing Date. In addition to the foregoing, in the event any such new Subsidiary owns or otherwise has interests in any Property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, take the actions required by clause (a) of this Section in relation thereto.

(c) Notwithstanding anything to the contrary in this Section 6.10, paragraphs (a) and (b) of this Section 6.10 shall not apply to any Property or new Subsidiary created or acquired after the Closing Date, as applicable, as to which the Administrative Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining either (i) a perfected security interest therein or (ii) with respect to real property, title and extended coverage insurance.

6.11 Use of Proceeds and Revenues.

(a) Use the proceeds of the Loans and request the issuance of Letters of Credit, only for the purposes specified in Section 4.16.

(b) deposit all Project Revenues in the manner required by the Disbursement Agreement, provided that with respect to any Project Revenues not controlled by the Disbursement Agreement, the Companies shall deposit all such Project Revenues into one or more Controlled Accounts (other than (i) On-Site Cash, (ii) as required by Requirements of Law or by Nevada Gaming Authorities, (iii) cash or cash equivalents that in the ordinary course of business are not maintained on deposit in a bank or other deposit or investment account pending application toward working capital or other general corporate purposes of the Companies, and (iv) cash or Cash Equivalents held in bank or other deposit or investment accounts for which Control Agreements are not required pursuant to the Collateral Documents), provided that Project Revenues from the sale of Condo Units shall be remitted to the Administrative Agent to the extent required in Section 2.11(a)(ii).

(c) Apply (whether directly or through an equity contribution to Borrowers) all Net Cash Proceeds, Excess Cash Flow, Bonded Condo Deposits and Loss Proceeds received by it in accordance with Sections 2.11 and 2.22.

6.12 Compliance with Laws; Permits.

(a) Comply with all Requirements of Law, noncompliance with which could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect and comply in all material respects with its Governing Documents.

(b) Comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under all Material Agreements, except where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(c) From time to time obtain, maintain, retain, observe, keep in full force and

effect and comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable laws, except to the extent the noncompliance therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.13 Further Assurances. From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent may reasonably request, for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Administrative Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by the Companies which may be deemed to be part of the Collateral) pursuant hereto or thereto. Without limitation on the foregoing, the Companies will promptly provide the Administrative Agent upon request with such further documents and agreements as may be required to provide the Administrative Agent with a first priority Lien upon any interests held by the Companies as tenants or subtenants in the Retail Air Space Parcel. Upon the exercise by the Administrative Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, Borrowers shall, or shall cause any other applicable Companies to execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or such Lender may be required to obtain from Companies for such governmental consent, approval, recording, qualification or authorization. In the event that, notwithstanding the covenants contained in Article 7, a Lien not otherwise permitted under this Agreement shall encumber the Retained Site or other item of Collateral or any portion thereof, the Companies shall promptly discharge or cause to be discharged by payment to the lienor or lien claimant or promptly secure removal by bonding or deposit with the county clerk or otherwise or, at the Administrative Agent's option, and if obtainable promptly obtain title insurance against, any such Lien or mechanics' or materialmen's claims of lien filed or otherwise asserted against the Retained Site or any other item of Collateral or any portion thereof within 60 days after the date of notice thereof; provided, that the provisions of this Section 6.13 (and compliance therewith) shall not be deemed to constitute a waiver of any of the provisions of Article 7. The Companies shall fully preserve the Lien and the priority of the Security Documents without cost or expense to the Administrative Agent or the Lenders. If the Companies fail to promptly discharge, remove or bond off any such Lien or mechanics' or materialmen's claim of lien as described above, which is not being contested by the Companies in good faith by appropriate proceedings promptly instituted and diligently conducted, within 30 days after the receipt of notice thereof, then the Administrative Agent may, but shall not be required to, procure the release and discharge of such Lien, mechanics' or materialmen's claim of lien and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise with the lienor or lien claimant or post any bond or furnish any security or indemnity as the Administrative Agent, in its sole discretion, may elect. In settling, compromising or arranging for the discharge of any Liens under this subsection, the Administrative Agent shall not be required to establish or confirm the validity or amount of the Lien. The Companies shall notify the Administrative Agent at the time that any Person becomes a Subsidiary of Las Vegas Holdings.

Each Borrower agrees that all costs and expenses expended or otherwise incurred pursuant to this Section 6.13 (including reasonable attorneys' fees and disbursements) by the Administrative Agent shall constitute Obligations and shall be paid by Borrowers in accordance with the terms hereof.

6.14 Condo Unit Sales.

(a) The Companies shall not sell any Condo Unit or accept any reservation therefor except pursuant to an Executed Condo Sales Agreement substantially in the form of Exhibit K (with any changes approved by the Administrative Agent, such approval not to be unreasonably withheld), providing for a sale price which is not less than the applicable Condo Unit Release Price, *provided* that the Administrative Agent may consent to the sale of not more than 25 Condo Units, in the aggregate, for a price which is not less than 90% of the "Minimum Release Price" set forth on Schedule 6.14 (minus the amounts of any deposits previously made in respect of that Condo Unit by any defaulting prospective purchaser thereof which the Companies are entitled to retain). No Condo Unit may be leased, sold or conveyed under any lease, conditional sales contract or other arrangement where the Companies retain a deferred portion of the purchase price or any residual or contingent interest in the Condo Unit, including any purchase money security interest, without the prior written consent of the Administrative Agent in each instance. The Companies will use reasonable best efforts to assure that not more than four Condo Units are sold to any one Person or group of Persons which are Affiliates (or, in the case of any Person which is an individual, members of that Person's immediate family).

(b) Upon request, the Companies shall provide to the Administrative Agent information regarding prospective buyers and notice of, or information regarding, any claimed breach or disavowal of the Companies' or any buyer's obligations under the related Executed Condo Sales Agreement.

(c) The Companies shall maintain all deposits in respect of Condo Units in a customary escrow account with the Condo Closing Agent (other than any Bonded Condo Deposits delivered to the Bonded Condo Proceeds Account).

(d) The Administrative Agent shall enter into arrangements with the Condo Closing Agent, the Companies and such other Persons as may be involved in the sale of Condo Units which are reasonably acceptable to the Companies and the Administrative Agent to coordinate escrow arrangements, the collection and disbursement of the proceeds of sales of Condo Units, the partial release of the Lien of the Deed of Trust with respect to any Condo Units sold in accordance with this Section and such other actions necessary to consummate the sales of Condo Units in respect of each Condo Unit (and, in connection therewith, related common areas including airspace above the highest point of the Project) sold in accordance with the provisions of this Section 6.14, *provided* that the Companies shall pay or reimburse the Administrative Agent for all costs and expenses incurred in connection therewith.

(e) The Companies shall not consummate the retail sale of any Condo Unit unless each of the following conditions have been or shall concurrently be satisfied:

(i) The Condo Closing Agent shall have received copies of the final,

executed sale agreement and escrow instructions and the draft escrow closing statement for the sale of such Condo Unit;

(ii) The sale price of such Condo Unit shall not be less than the price required by clause (a) of this Section;

(iii) The Condo Closing Agent shall have obtained or delivered a commitment to deliver to the Administrative Agent such endorsements to the policy of title insurance insuring the Deed of Trust as the Administrative Agent may reasonably specify in connection with the release of the Lien of the Deed of Trust with respect to such Condo Unit and other related rights, including without limitation CLTA Form 111 Endorsements; and

(iv) The Companies shall remit to the Administrative Agent, in immediately available funds, the amounts required by Section 2.11(a)(ii).

SECTION 7. NEGATIVE COVENANTS

Each Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding (other than Letters of Credit that have been Cash Collateralized) or any Loan or other amount is owing to any Lender, any Arranger or the Agent hereunder or under any other Loan Document, Borrowers shall not and shall cause each of the other Companies not to, directly or indirectly, it being understood and agreed that the covenants set forth in this Section 7 shall be of continuous application unless otherwise expressly stated below:

7.1 Financial Covenants.

(a) Total Leverage Ratio. Permit the Total Leverage Ratio as of the First Test Date or as of the last day of any subsequent fiscal quarter to exceed the ratio set forth below opposite that fiscal quarter, provided that in respect of each fiscal quarter ending after the Parent Guaranty Release Date, the maximum permitted Total Leverage Ratio shall be the lesser of 5.50:1.00 or the applicable ratio set forth below:

<u>Fiscal Quarter</u>	<u>Maximum Total Leverage Ratio</u>
First Test Quarter	8.30:1.00
Second Test Quarter	8.00:1.00
Third Test Quarter	7.75:1.00
Fourth and Fifth Test Quarters	6.50:1.00
Sixth and Seventh Test Quarters	6.25:1.00
Eighth Test Quarter through and including Eleventh Test Quarter	5.50:1.00

Thereafter 5.25:1.00

(b) First Lien Leverage Ratio. Permit the First Lien Leverage Ratio as of the First Test Date or as of the last day of any subsequent fiscal quarter to exceed the ratio set forth below opposite that fiscal quarter:

Fiscal Quarter	Maximum First Lien Leverage Ratio
First Test Quarter	5.15:1.00
Second Test Quarter	5.00:1.00
Third Test Quarter	4.75:1.00
Fourth and Fifth Test Quarters	3.75:1.00
Sixth and Seventh Test Quarters	3.50:1.00
Eighth Test Quarter through and including Eleventh Test Quarter	3.00:1.00
Thereafter	2.75:1.00

(c) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio as of the First Test Date or as of the last day of any subsequent fiscal quarter to be less than the ratio set forth below opposite that fiscal quarter:

Fiscal Quarter	Minimum Fixed Charge Coverage Ratio
First Test Quarter through and including Ninth Test Quarter	1.20:1.00
Thereafter	1.25:1.00

7.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness of any Company created under any Loan Document;
- (b) Indebtedness of the Companies under the Second Mortgage Indenture in an aggregate principal amount not to exceed \$675,000,000 and Permitted Refinancing Indebtedness incurred to refund, refinance or replace any such Indebtedness, in each case in an aggregate outstanding principal amount not to exceed \$675,000,000 at any time;
- (c) Unsecured Indebtedness of any Company to another Company;
- (d) Unsecured Guarantee Obligations made in the ordinary course of business by any Company of obligations of another Company;
- (e) Indebtedness of the Companies (including, without limitation, Capital

Lease Obligations) secured by Liens permitted by Section 7.3(c) in an aggregate principal amount not to exceed \$25,000,000 at any one time outstanding;

(f) Subordinated Debt of the Companies in an aggregate principal amount not to exceed \$25,000,000 at any one time outstanding; provided, that the Net Cash Proceeds of such Subordinated Debt are applied as required by Section 2.11;

(g) On or prior to the Final Completion Date, Guarantee Obligations represented by performance bonds, guaranties, bankers' acceptances or similar instruments issued by a Person other than any Company for the benefit of a trade creditor of any such Company, in an aggregate amount not to exceed \$10,000,000 at any time outstanding so long as (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of the Companies supported thereby consist solely of payment obligations with respect to costs incurred in accordance with the Resort Budget which would otherwise be permitted to be paid pursuant to the Disbursement Agreement, and (2) are secured solely by Liens permitted by Section 7.3(o);

(h) After the date upon which the Project Entities have notified the Disbursement Agent that the Completion Date will occur within 60 days, Guarantee Obligations represented by performance bonds, guaranties, bankers' acceptances or similar instruments issued by a Person other than any Company for the benefit of a trade creditor of any such Company, in an aggregate amount not to exceed \$5,000,000 at any time outstanding so long as (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of the Companies supported thereby (1) are not Project Costs and (2) if secured, are secured solely by Liens permitted by Section 7.3(p);

(i) Contingent obligations in respect of bonding arrangements for Bonded Condo Deposits which have been remitted to the Disbursement Agent;

(j) To the extent constituting Indebtedness, accrued and unpaid obligations under the Affiliate Agreements, including Subordinated Affiliate Expenses; and

(k) Additional Indebtedness of the Company in an aggregate principal amount (for all the Companies) not to exceed \$5,000,000 at any one time outstanding.

7.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens created pursuant to the Security Documents;

(b) Liens securing Indebtedness in respect of the Second Mortgage Notes permitted under Section 7.2(b) and any Permitted Refinancing Indebtedness in relation thereto; provided, that such Liens are junior in priority (other than in respect of the Second Mortgage Proceeds Account) to the Liens securing the Obligations in the manner and to the extent set forth in the Project Lender Intercreditor Agreement;

(c) Liens with respect to Property of the Companies securing Indebtedness and to any proceeds of the sale or other disposition thereof incurred or assumed for the purpose

of financing (or financing the purchase price within 180 days after the respective purchase of Property) all or any part of the acquisition, design, installation, construction, repair or improvement cost of such Property; provided, that such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other Disposition thereof and the proceeds (including insurance proceeds), products, rents, profits, accession and replacements thereof or thereto) financed by such Indebtedness;

(d) Liens for taxes, assessments or government charges not yet due or which are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the applicable Company, as the case may be, in conformity with GAAP;

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Collateral on account of such Lien); provided, that adequate reserves with respect thereto are maintained on the books of the applicable Company, as the case may be, in conformity with GAAP;

(f) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(g) deposits by or on behalf of the Companies to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds, indemnities, release bonds, fee and expense arrangements with trustees and fiscal agents and other obligations of a like nature incurred in the ordinary course of business.

(h) easements, covenants, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property, taken as a whole, or materially interfere with the ordinary conduct of the business of the Companies, taken as a whole;

(i) licenses of patents, trademarks and other intellectual property rights granted by any of the Companies in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Companies, taken as a whole;

(j) any attachment or judgment Lien not constituting an Event of Default under Section 8(h);

(k) Permitted Encumbrances;

(l) Liens arising from the filing of UCC financing statements relating solely to leases permitted by this Agreement;

(m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(n) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of the Site;

(o) Liens on cash disbursed pursuant to the Disbursement Agreement and deposited with, or held for the account of, any Company securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under Section 7.2(g), granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as the amount of cash and/or Cash Equivalents securing such Liens does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Cash Equivalents); and

(p) Liens on cash deposited with, or held for the account of, any Company securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under Section 7.2(h), granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as the amount of cash and/or Cash Equivalents secured by such Liens does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Cash Equivalents);

(q) leases and subleases of space within the Project permitted by Section 7.5;

(r) Liens in respect of any Property which is subject to an agreement to Dispose of that Property in favor of the counterparty to that agreement, to the extent such Disposition is permitted by Section 7.4 or 7.5;

(s) so long as the Disbursement Agreement is in effect, any "Permitted Liens" under the Disbursement Agreement;

(t) Liens in respect of customary rights of set off, revocation, refund or chargeback or similar rights under deposit, disbursement, concentration account agreements or under the UCC or arising by operation of law of banks or other financial institutions where any Company maintains deposit, disbursement or concentration accounts in the ordinary course of business permitted by this Agreement;

(u) Liens of sellers of goods to the Companies arising under Article 2 of the UCC or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(v) to the extent the Companies lease (or sublease), license (or sublicense) or obtain easement rights over any Property other than the Retained Site, the rights of any fee or other senior owners of such Property, and, to the extent any such owners have Indebtedness secured by their interests in such Property, the rights of such secured creditors therein;

(w) utility easements in favor of Nevada Power Company that are subject to the certain letter dated April 19, 2007 from Nevada Power Company to STF Inc.;

- (x) Dispositions described in Sections 7.5(f), (j), (k), (m), (n); and
- (y) additional Liens incurred by Companies not securing Indebtedness so long as the value of the Property subject to such Liens (valued at the time such Lien is incurred) do not exceed \$5,000,000 in the aggregate at any time.

7.4 Limitation on Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that:

- (a) any of the Companies may merge with any of the other Companies;
- (b) any of the Companies may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Company; and
- (c) any Company may Dispose of any of its Property in accordance with Section 7.5.

7.5 Limitation on Disposition of Property. Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any shares of Equity Interests to any Person, except:

- (a) the Disposition in the ordinary course of business of obsolete or worn out Property or Property no longer useful in the business of the Companies;
- (b) the Disposition of cash or Cash Equivalents (in each case in transactions otherwise permitted hereunder), Investments permitted pursuant to Section 7.8 and Dispositions thereof, and Dispositions of inventory (in the ordinary course of business) and receivables (in connection with the collection thereof and otherwise as customary in gaming operations);
- (c) Dispositions permitted by Section 7.4;
- (d) the sale or issuance of any Company's Equity Interests (other than Disqualified Stock) to its direct parent;
- (e) Dispositions of Property having a fair market value not in excess of \$5,000,000 in the aggregate in any Fiscal Year following the Opening Date; provided, that (i) the consideration received for such Property shall be in an amount at least equal to the fair market value thereof; and (ii) not less than 85% of the consideration received shall be cash and Cash Equivalents, provided that the requirements of Section 2.11(a)(i) are complied with in connection therewith;
- (f) Dispositions consisting of dedications of space within the Project for the purpose of constructing (i) a transit system designed to facilitate the movement of people in and out of the Project; (ii) a pedestrian bridge over or a pedestrian tunnel or similar structures to facilitate the movement of pedestrians or vehicle traffic, (iii) a roadway dedication or (iv) such other structures or improvements reasonably related to and in furtherance of the development, construction and operation of the Project; provided, that in each case such dedication does not materially impair or interfere in the use or operations of the Project, taken as a whole, or

materially detract from the value of the Project;

(g) the incurrence of Permitted Liens;

(h) any Disposition which occurs as a result of a Taking or other similar Event of Loss; provided, that the requirements of Sections 2.11(a)(iii) and 2.22 are complied with in connection therewith; and

(i) Dispositions by any Company to any other Company; provided, that in each case each Company shall have taken all actions required pursuant to Section 6.10 with respect to any Property so acquired;

(j) Dispositions (whether of fee interests, leasehold interests or easements) made with the prior written consent of the Administrative Agent (not to be unreasonably withheld or delayed) of real property to the extent reasonably required to accommodate the Access Road, provided that (x) no Default or Event of Default shall have occurred and remain continuing, (y) each such Disposition shall be made in connection with the establishment of the Access Road and the Companies shall concurrently receive the contemplated benefits of the Access Road from the adjoining landowners and enter into such amendments of the Deed of Trust as may be required to encumber all of the rights of the Company in the Access Road, and (z) the Administrative Agent shall have received such endorsements to its policies of title insurance as it may reasonably require in connection therewith;

(k) Dispositions of the fee or leasehold interests in the property underlying the Retail Air Space Lease, provided that the conditions to such Dispositions set forth in the Retail Intercreditor Agreement and the Retail Air Space Lease have been complied with;

(l) Dispositions of Condo Units (and related common areas, including airspace above the highest point of the Project) in accordance with Section 6.14;

(m) Dispositions consisting of declarations of condominium spaces within the Site, the grant of related declarations of covenants, conditions and restrictions and reservation of easements and common area spaces benefiting owners of the Condo Units generally, provided, in each case that the Administrative Agent shall have reasonably approved the configuration, terms and conditions thereof in writing and shall have received any endorsements to its title policies as it may reasonably require;

(n) Dispositions of easements and rights-of-way to utility companies in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property, taken as a whole, or materially interfere with the ordinary conduct of the business of the Companies, taken as a whole;

(o) Dispositions of leases or subleases with respect to any space on or within the Project so long as: (i) no Event of Default shall exist and be continuing at the time of such lease or sublease or would occur as a result of entering into such transaction, lease or sublease (or immediately after any renewal or extension thereof at the option of a Company), (ii) such lease or sublease could not reasonably be expected to materially interfere with, or materially impair or detract from, the operation of the Project, (iii) no gaming, hotel or casino operations

(other than the operation of arcades and games for minors) may be conducted on any space that is subject to such lease or sublease other than by and for the benefit of the Companies and (d) no lease or sublease may provide that a Company subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; *provided*, that the Administrative Agent on behalf of the Lenders shall agree to provide the tenant under any such lease or sublease with a subordination, non-disturbance and attornment agreement in form and substance reasonably acceptable to the Administrative Agent;

(p) the Companies may release any Property subject to the Affiliate Lease from the Affiliate Lease prior to the termination thereof; and

(q) Dispositions of portions of the Site to accommodate any amendments to the Retail Air Space Parcels based upon any inaccuracies or adjustments to such parcels which result from the failure of the Project (as constructed) to conform to the exact dimensions of the Retail Air Space Parcels as configured on the Closing Date (either because the floors constructed in the Project are of a higher or lower elevation, the outer walls are in a different location or the parcels with respect thereto are in a different configuration than the parcels so described on the Closing Date), so long as in any case the square footage or dimensions of the Retail Air Space Parcels are not increased by more than 5% from that on the Closing Date.

7.6 Limitation on Restricted Payments and Payments in respect of Subordinated Affiliate Expenses. 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 Equity Interests of any of the Companies, whether now or hereafter outstanding, or make any other distribution in respect of such Equity Interests, or make any payment in respect of the Subordinated Affiliate Expenses, in each case whether either directly or indirectly, and whether in cash or property or in obligations of any of the Companies, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "Derivatives Counterparty") obligating any Company to make payments to such Derivatives Counterparty as a result of any change in market value of any such Equity Interests (collectively, "Restricted Payments"), except that:

(a) each Company may declare and pay Restricted Payments payable solely by the issuance of Equity Interests (excluding Disqualified Stock) of the Company making such Restricted Payment;

(b) to the extent constituting Restricted Payments, (i) any Company may consummate a transaction permitted pursuant to Section 7.4, (ii) any Company may make Dispositions permitted pursuant to Section 7.5, (iii) any Company may make Investments permitted pursuant to Section 7.8, and (iv) any Company may take actions permitted pursuant to Section 7.10;

(c) any Company may make Restricted Payments to any other Company;

(d) following the Opening Date, during any period in which any Company is a Pass Through Entity or Consolidated Member, the Companies may make Restricted Payments to their direct or indirect owners with respect to any such period in an aggregate amount not to

exceed such owners' Tax Amounts for such period;

(c) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Companies may make Restricted Payments in an amount which is equal to any Designated Equity Contributions made in accordance with Section 3.8 or 3.9 of the Disbursement Agreement *provided* that at the time of the making of such Restricted Payments, the making thereof is permitted by Section 3.8 or 3.9 of the Disbursement Agreement, as the case may be; and

(f) on and after the Completion Date, and so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Companies may make Restricted Payments not otherwise permitted under any other subsection of this Section 7.6:

(i) in an aggregate amount not to exceed the aggregate principal amount of the Subordinated Affiliate Expenses which have accrued and remain unpaid from time to time, together with interest thereon at the rates set forth in the Affiliate Agreements, *provided* that the aggregate amount of all such payments shall not at any time exceed the cumulative amount which is equal to the positive Excess Cash Flow for each Excess Cash Flow Period which has then occurred times the relevant Company Excess Cash Flow Percentage for each such Excess Cash Flow Period, *provided* further that the Companies may not make any Restricted Payments pursuant to this Section 7.6(f)(i) except during the 30 day period following the date each payment is made pursuant to Section 2.11(a)(vi);

(ii) *provided* that after giving pro forma effect to the making of the Restricted Payments as of the last day of the then most recently ended Fiscal Quarter for which a Compliance Certificate has been delivered hereunder, the Total Leverage Ratio as of the last day of such Fiscal Quarter is not greater than 4.00:1.00, any other Restricted Payments; and

(iii) in an amount equal to any Equity Financed Capital Expenditures applied toward Capital Expenditures necessary as a result of a casualty or a Taking prior to receipt of Loss Proceeds by the Companies with respect thereto (and in such case, such Restricted Payments to be made solely from such Loss Proceeds when received).

7.7 Limitation on Capital Expenditures. Make, commit to make or incur Capital Expenditures, other than Capital Expenditures:

(a) which are contemplated by the Resort Budget and the Shared Costs permitted by the Disbursement Agreement;

(b) following the Opening Date, which are in an aggregate amount in excess of \$30,000,000 (without taking into consideration any Capital Expenditures permitted pursuant to clauses (a) or (c) of this Section 7.7) during any Fiscal Year, *provided* that any amount not expended in any Fiscal Year may be carried forward and expended in the following Fiscal Year to the extent expended for improvements at the Retained Site (and any amounts expended in any

Fiscal Years shall be allocated to such carry over amounts prior to the \$30,000,000 base amount); and

(c) Equity Financed Capital Expenditures.

7.8 Limitation on Investments. Make any advance (other than prepaid expenses and similar items in the ordinary course of business), loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Equity Interests, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project's casino operation consistent with ordinary course gaming operations);

(b) Investments in Cash Equivalents;

(c) loans and advances to employees of the Companies in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount not to exceed \$2,500,000 at any one time outstanding;

(d) Investments by any Company in other any other Company;

(e) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to any Company or in satisfaction of judgments;

(f) nominal capital contributions in connection and in furtherance of the formation of new Subsidiaries in accordance with Section 7.17;

(g) to the extent constituting Investments, (i) any Company may consummate a transaction permitted pursuant to Section 7.4, (ii) any Company may make Dispositions permitted pursuant to Section 7.5, and (iii) any Company may take actions expressly permitted pursuant to Section 7.10;

(h) in addition to Investments otherwise expressly permitted by this Section 7.8, so long as no Default or Event of 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 Companies in an aggregate amount (valued at cost) not to exceed \$10,000,000 at any one time outstanding;

(i) Investments consisting of pledges or deposits in the ordinary course of business;

(j) Investments received as consideration for a Disposition consisting of debt securities and other non-cash consideration permitted by Section 7.5; and

(k) Investments in joint ventures established to operate restaurants, night clubs or other retail space within the Project in an aggregate amount not to exceed at any time outstanding \$5,000,000 (determined in accordance with book value at the time of determination).

7.9 Limitation on Optional Payments and Modifications of Governing Documents. (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease any Indebtedness that is either subordinate or junior in right of payment to the Obligations (including any Subordinated Debt) or Indebtedness under the Second Mortgage Indenture, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating any Company to make payments to such Derivatives Counterparty as a result of any change in market value of such Indebtedness, other than the prepayment of Indebtedness incurred hereunder or the prepayment of the Indebtedness with the proceeds of Permitted Refinancing Indebtedness; or (b) amend or modify, or permit the amendment or modification of its Governing Documents in any manner adverse to the Lenders unless otherwise required in order to satisfy a condition or requirement set forth in the Disbursement Agreement.

7.10 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than such transactions solely among Las Vegas Holdings and its Subsidiaries) unless such transaction:

- (a) Is consummated pursuant to the terms of the Affiliate Agreements, as in effect on the Closing Date;
- (b) Is on terms that are not less favorable to the Companies than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates and Borrowers have delivered to the Administrative Agent (1) with respect to any transaction or series of related transactions involving an amount in excess of \$5,000,000, a certificate signed by a Responsible Officer of the Companies certifying that such transaction or series of related transactions complies with this Section 7.10, (2) with respect to any such transaction or series of related transactions that involves aggregate payments in excess of \$10,000,000, an opinion as to the fairness to the applicable Company at the time such transaction or series of related transactions is entered into from a financial point of view issued by an independent financial advisor satisfactory to the Administrative Agent;
- (c) Is an employment agreement entered into by a Company in the ordinary course of business;
- (d) Consists of Restricted Payments permitted pursuant to Section 7.6;
- (e) Consists solely of any Investment in a joint venture of the types described in Section 7.8(k);
- (f) Consists of the payment of Project Costs as permitted pursuant to the Disbursement Agreement (subject, where applicable, to the terms of the Affiliate Subordination Agreement);
- (g) Consists of the reimbursement of Project Costs paid in accordance with Sections 3.8 or 3.9 of the Disbursement Agreement or the reimbursement of amounts provided

by an Affiliate for application toward Capital Expenditures necessary as a result of a casualty or Taking prior to receipt of Loss Proceeds by the Companies with respect thereto (and, in such case, such reimbursement to be made solely from such Loss Proceeds when received); or

(h) Consists of the payment of reasonable directors and managers fees to directors and managers of the Companies, and customary indemnification and insurance arrangements, in favor of such directors and managers, in each case in the ordinary course of business and with duplication of the amounts required to be paid pursuant to the Affiliate Agreements.

7.11 Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Company of Property which has been or is to be sold or transferred by any Company to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of any Company (except as expressly permitted by Section 7.10).

7.12 Limitation on Changes in Fiscal Periods. Permit the fiscal year of any Company to end on a day other than December 31 or change any Company's method of determining fiscal quarters.

7.13 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any of the Companies 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) this Agreement and the other Loan Documents;
- (b) the Second Mortgage Indenture and all agreements related thereto, and any instruments, documents or agreements refinancing the Second Mortgage Indenture in each case which do not prohibit the Lien securing the Obligations except to the extent permitted by the Project Lender Intercreditor Agreement;
- (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); provided, that the principal amount of Indebtedness thereunder shall exceed 75% of the original purchase price of the assets financed thereby;
- (d) customary nonassignment provisions contained in leases, licenses and similar agreements (in each case other than those with respect to Real Estate) and so long as such restrictions are limited to such leases, licenses and similar agreements;
- (e) any agreements governing any Excluded Assets (in which case any prohibition or limitation shall only be effective against such Excluded Assets and proceeds thereof);
- (f) as required by applicable law or any applicable rule or order, including those of any Nevada Gaming Authority; and

(g) any agreements governing any Liens permitted pursuant to Sections 7.3(f), 7.3(g), 7.3(o) or 7.3(p) with respect to the Property which is subject to those Liens.

7.14 Limitation on Restrictions on Subsidiary Distributions, etc. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of Borrowers to:

(a) make Restricted Payments in respect of any Equity Interests of any such Subsidiary to Borrowers, or pay or subordinate any Indebtedness owed to, any of the Companies;

(b) make Investments in Borrowers; or

(c) transfer any of its assets to Borrowers,

except, in each case, for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions under the Second Mortgage Indenture and all agreements related thereto, (iii) as required by applicable law or any applicable rule or order, including those of any Nevada Gaming Authority, (iv) restrictions upon any such Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of its Equity Interests or upon its Property to the extent related to Property which it has agreed to sell, (v) any restrictions imposed with respect to any Property subject to a Lien permitted in accordance with Section 7.3 pursuant to an agreement that has been entered into in connection with the incurrence of such Liens so long as such restrictions relate solely to the Property subject to such Liens and (vi) customary nonassignment provisions in leases, licenses and similar agreements and other contracts which, taken as a whole, are not material to the business and operations of the Companies.

7.15 Limitation on Lines of Business. Enter into any business or investment activities, whether directly or indirectly, other than Permitted Businesses.

7.16 Restrictions on Changes.

Amend or otherwise change the terms of any Financing Agreements (other than the Loan Documents) or permit the termination thereof (other than in accordance with the terms thereof), or enter into any new Financing Agreements or make any payment consistent with an amendment thereof or change thereto, (i) if the effect of such amendment, change or new Financing Agreement is to increase the interest rate or fees on the Indebtedness evidenced thereby, change (to earlier or more frequent dates) any dates upon which payments of principal or interest are due thereon (including, without limitation, changes to, or new additions of, mandatory prepayment provisions), change the redemption, prepayment or defeasance provisions thereof or change the subordination provisions thereof (or of any guaranty thereof) or (ii) in the case of the Second Mortgage Indenture, or any documents related thereto, if the effect of such amendment, change or new Financing Agreement, together with all other amendments and changes previously made or new Financing Agreements previously entered into, is to materially increase the obligations of the obligors thereunder or to confer any additional rights on the holders of the Indebtedness or obligations evidenced thereby which could reasonably be expected to be materially adverse to the Companies, taken as a whole, or the Lenders; provided, that the Companies may amend the terms of any other Financing Agreement to increase the principal amount thereof if such increase is otherwise expressly permitted by the Intercreditor

Agreements and this Agreement.

7.17 Limitation on Formation and Acquisition of Subsidiaries and Purchase of Equity Interests. Except as otherwise permitted pursuant to Section 7.4, form, create or acquire any direct or indirect Subsidiary, except so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, Borrowers and their Subsidiaries may form, create or acquire new Subsidiaries; provided, that (a) any such new Subsidiary shall be a Wholly Owned Subsidiary of its requisite parent entity, and (b) any such new Subsidiary shall become a Company hereunder and otherwise comply with the requirements of Section 6.10. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any of the Companies own any Equity Interests other than that of its Wholly Owned Subsidiaries and interests in joint ventures permitted pursuant to Section 7.8(k).

7.18 Limitation on Hedge Agreements. Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, and to protect against changes in interest rates or foreign exchange rates or commodity prices (with respect to commodities used by the Companies in a Permitted Business).

7.19 Limitation on Sale or Discount of Receivables. Except as permitted pursuant to Section 7.5(b), directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

7.20 Limitation on Zoning and Contract Changes and Compliance. Initiate, consent to or acquiesce to (a) any zoning downgrade of the Site or seek any material variance under any existing zoning ordinance except, in each case, to the extent such downgrade or variance could not reasonably be expected to materially and adversely affect the occupancy, use or operation of the Retained Site, (b) use or permit the use of the Retained Site in any manner that could result in such use becoming a non-conforming use (other than a non-conforming use otherwise in compliance with applicable land use laws, rules and regulations by virtue of a variance or otherwise) under any zoning ordinance or any other applicable land use law, rule or regulation or (c) any change in any laws, requirements of Governmental Authorities or obligations created by private contracts which now or hereafter could reasonably be expected to materially and adversely affect the occupancy, use or operation of the Retained Site.

7.21 No Joint Assessment; Separate Lots. Suffer, permit or initiate the joint assessment of the Retained Site with any other real property constituting a separate tax lot, other than the Retail Air Space Parcels (until such time as such Retail Air Space Parcels have been transferred to the Retail Affiliate in fee).

7.22 Acquisition of Real Property. Acquire a fee, easement or other interest in any real property (including, without limitation, any lease of real property, but excluding any other leasehold interests acquired by a Company over real property already subject to the Lien of the Deed of Trust) unless the Companies have (i) delivered to the Administrative Agent a Phase I Report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent confirming that no Hazardous Substances were found in, on or under such real property in a manner that could reasonably be expected to result in a material liability to such Company and that a Phase II Report is not warranted by the findings of such Phase I Report and (ii) complied with the

provisions of Section 6.10. Notwithstanding the foregoing, this Section 7.22 shall not apply to the acquisition by the Companies of any fee, easement or other interest in any real property as to which the Administrative Agent has determined that the size, location and proposed use thereof are insufficient to justify the time and expense of satisfying the terms of this Section 7.22.

7.23 Use of Proceeds. (a) Use the proceeds of any Loan or L/C Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, or (b) pay any Project Costs using the Proceeds of any Direct Loan.

7.24 Liquidity Account. Fail to maintain the Liquidity Account in the manner required by the Disbursement Agreement, *provided* that from and after the date upon which the disbursement of amounts contained in the Liquidity Account are to be directed by this Section in accordance with the terms of Section 2.17 and 2.23.3 of the Disbursement Agreement, then (a) such amounts may be applied from time to time for the payment of Debt Service, and (b) such amounts shall be applied to the prepayment of the outstanding Revolving Loans (but without reducing the Revolving Commitments) upon the delivery of a Compliance Certificate demonstrating that the Total Leverage Ratio has been reduced to 7.00:1.00. From and after the date upon which the Administrative Agent is entitled to do so pursuant to the Disbursement Agreement, the Administrative Agent shall direct the Disbursement Agent to release funds from the Liquidity Account for the purposes described herein in accordance with this Section promptly upon the request of the Borrowers.

SECTION 8. EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) (i) Borrowers shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or (ii) Borrowers shall fail to pay any interest on any Loan or Reimbursement Obligation or any of the Companies shall fail to pay any other amount payable hereunder or under any other Loan Document within three days after any such interest or other amount under this clause (ii) becomes due in accordance with the terms hereof; provided, that the failure to pay any amount due under the Disbursement Agreement (and not otherwise due hereunder) shall constitute an Event of Default hereunder only to the extent such failure to pay constitutes a Disbursement Agreement Event of Default; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; provided, that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default; or

(c) (i) any Company shall default in the observance or performance of any agreement contained in Section 6.4(i), Section 6.7(a), Section 7, or Section 5.1 of the Guarantee and Collateral Agreement, provided, that with respect to those covenants incorporated by reference from this Agreement into the Guarantee and Collateral Agreement no Event of Default shall occur from a Company's default in the observance or performance of such covenants until expiration of the notice and cure periods, if any, set forth under this Section 8 that are applicable to the corresponding covenants in this Agreement, (ii) Resort Properties I shall default in the observance or performance of the covenants contained in Section 5 of the Resort Properties I Guaranty, (iii) Tumberry Residential shall default in the performance or observance of the covenants contained in (x) Sections 2, 3 or 6 of the Completion Guaranty issued by Tumberry Residential or (y) where such default continues unremedied for thirty days, in respect of any other covenant thereunder, (iv) an "Event of Default" under and as defined in the Deed of Trust shall have occurred and be continuing, (v) a Disbursement Agreement Event of Default shall have occurred and be continuing, or (vi) the Companies shall fail to at all times maintain in full force and effect the insurance policies and programs listed on Schedule 6.5(d); or

(d) Any Loan Party shall default in the observance or performance of any other covenant or agreement contained in this Agreement or any other Loan Document to which it is a party (other than as provided in subsections (a) through (c) of this Section but subject to the proviso set forth in Section 8(c)(i)), and such default shall continue unremedied for a period of 30 days after the earlier of (i) the Companies becoming aware of such default or (ii) receipt by the Companies of written notice from the Administrative Agent or any Lender of such default; provided, that the failure to perform or comply with any such provision of the Disbursement

Agreement shall constitute an Event of Default hereunder only to the extent such failure to perform or to comply constitutes a Disbursement Agreement Event of Default; or

(e) Any of the Loan Parties shall (i) default in making any payment of any principal of any Indebtedness (including, without limitation, any Guarantee Obligation) on the scheduled due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause immediately such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; provided, that a default, event or condition described in this subsection (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in this subsection (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$10,000,000, provided, further, that clause (iii) above shall not apply to (A) Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets or as a result of a mandatory prepayment or a regularly scheduled repayment or (B) prepayments that become due as a result of any incurrence of Indebtedness (in each case to the extent such sale, transfer or incurrence is permitted by the terms of such Indebtedness); or

(f) (i) Any of the Loan Parties (or, prior to the Opening Date, the Retail Affiliate) shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any such Person shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any such Person any case, proceeding or other action of a nature referred to in subsection (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against any such Person any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) any such Person shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in subsection (i), (ii), or (iii) above; or (v) any such Person shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any of the Companies shall engage in any non-exempt "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any

Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any of the Companies or any Controlled Group Member, (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 reasonably 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 of the Companies or any Controlled Group Member shall, or is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any of the Companies or any Controlled Group Member shall be required to make payments pursuant to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by Sections 601 et. seq. of ERISA, Section 4980B of the Code, or the corresponding provisions of applicable state law; and in each case in subsections (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; or

(h) One or more judgments or decrees shall be entered against any of the Companies resulting in a liability (to the extent not paid, bonded or covered by insurance as to which the relevant insurance company has acknowledged coverage, subject to deductibles permitted by Schedule 6.5(d)) of \$5,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged or stayed pending appeal within 60 days from the entry thereof; or

(i) Any of the Guarantees or Security Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert or shall assert that any provision of any Loan Document is not in full force and effect, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (except to the extent expressly contemplated or permitted by the Loan Documents), or any Loan Party shall assert the same; or

(j) Any of the Financing Agreements shall terminate or be terminated or canceled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date or any Company, any Affiliate of any Borrower or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Material Agreement (after the giving of any applicable notice and the expiration of any applicable grace period); provided, that the occurrence of any of the foregoing events with respect to any Material Agreement (other than any Material Affiliate Agreement) shall constitute an Event of Default hereunder only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for thirty days after the earlier of (i) the Companies becoming aware of such occurrence or (ii) receipt by the Companies of written notice from the Administrative Agent or any Lender of such occurrence; provided, however, that in the case of any such Material Agreement, if the occurrence is the result of actions or inactions by a party other than a Loan Party, then no Event of Default shall be deemed to have occurred as a result thereof if Borrowers provide written notice to the Administrative

Agent immediately upon (but in no event more than five Banking Days after) the Companies becoming aware of, or receiving notice of, such occurrence that the Companies intend to replace such Material Agreement and (x) the Companies obtain a replacement obligor or obligors for the affected party, (y) the Companies enter into a replacement Material Agreement on terms no less beneficial to the Companies and the Secured Parties in any material respect than the Material Agreement being replaced within sixty days of such occurrence; provided, however, that the replacement Material Agreement may require the Companies to pay amounts under the replacement Material Agreement in excess of those that would have been payable under the replaced Material Agreement and (z) such occurrence, after considering any replacement obligor and replacement Material Agreement and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; provided, further, that a breach, default or termination under any Construction Material Agreement prior to the Completion Date shall constitute an Event of Default hereunder only to the extent such breach, default or termination constitutes a Disbursement Agreement Event of Default; or

(k) A Change of Control shall occur; or

(l) The Liens on the Property of the Companies (other than the Second Mortgage Proceeds Account) securing the obligations under the Second Mortgage Indenture or the Second Mortgage Upstream Guarantees shall cease, for any reason, to be validly subordinated and junior in right to the Liens of the Administrative Agent and the Secured Parties on the Property of such Persons under the Loan Documents;

(m) Any Subordinated Debt shall cease, for any reason, to be validly subordinated to the Obligations in the manner contemplated in the documentation, instruments or other agreements related to the Subordinated Debt;

(n) A License Revocation that continues for three consecutive Banking Days affecting gaming operations accounting for five percent or more of the consolidated gross revenues (calculated in accordance with GAAP) of the Companies related to gaming operations;

(o) Any of the Companies (or, prior to the Opening Date, the Retail Affiliate) 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) The Opening Date shall not have occurred by the Outside Date (as the same may be extended from time to time in accordance with the terms of the Disbursement Agreement), provided that the Majority Initial Arrangers, in their sole discretion, may reduce the Master Disbursement Agreement's requirement that at least 70% of the tenant improvements with respect to the retail space within the Project (determined on the basis of square footage) be completed as a condition to the Opening Date to a requirement of not less than 60%; or

(q) The Completion Date shall not have occurred within 180 calendar days following the Opening Date, *provided* that the Majority Initial Arrangers may, in their sole discretion, extend the date upon which the Completion Date must occur to the first anniversary of the Opening Date; or

(r) Any failure of the Retail Affiliate to comply with its obligations pursuant to the Retail Air Space Lease and the Reciprocal Easement Agreement which could reasonably be expected to have a Material Adverse Effect.

then, and in any such event, (A) if such event is an Event of Default specified in subsection (i) or (ii) of paragraph (f) above with respect to any Commitments, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the either the Required Lenders or the Required Facility Lenders for the respective Facility, the Administrative Agent may, or upon the request of the Required Lenders or the Required Facility Lenders for the respective Facility, the Administrative Agent shall, by notice to Borrowers, declare the Revolving Commitments and/or the Delay Draw Commitments, as the case may be, to be terminated forthwith, whereupon the applicable Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to Borrowers, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent and the Lenders shall be entitled to exercise any and all remedies available under the Security Documents (subject to applicable Nevada Gaming Laws and the UCC and securing any required Nevada Gaming Approvals), including, without limitation, the Guarantee and Collateral Agreement and the Deed of Trust, or otherwise available under applicable law, in equity or otherwise (subject to compliance with applicable Laws, including all Nevada Gaming Laws), including, without limitation, the right to (I) enter into possession of the Project and perform any and all work and labor necessary to complete the Project or to operate and maintain the Project, and all sums expended by the Administrative Agent or any other Secured Party in so doing, together with interest on such total amount at the highest default rate provided hereunder, shall be Obligations hereunder, shall be repaid by Borrowers to the Administrative Agent or such Secured Party upon demand and shall be secured by the Loan Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the total amount of the Commitments and (II) set off and apply all monies on deposit in any Account or any amounts on deposit with the Administrative Agent or any Lender to the satisfaction of the Obligations. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, Borrowers shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount in immediately available funds.

equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. If at any time the Administrative Agent determines that any funds held in such cash collateral account are subject to any right or claim of any Person other than the Administrative Agent and the Secured Parties or that the total amount of such funds is less than the aggregate undrawn and unexpired amount of outstanding Letters of Credit, Borrowers shall, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in such cash collateral account, an amount equal to the excess of (a) such aggregate undrawn and unexpired amount over (b) the total amount of funds, if any, then held in such cash collateral account that the Administrative Agent determines to be free and clear of any such right and claim. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other Obligations have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Companies (or such other Person as may be lawfully entitled thereto). Notwithstanding anything to the contrary contained in this Agreement, in the event the consent of the Lenders (whether the Required Lenders, the Required Facility Lenders for a particular Facility or otherwise) is required in connection with the exercise of remedies pursuant to this Section 8, for purposes of determining the required lender consent pursuant to the applicable definitions thereto (whether the "Required Lenders", the "Required Facility Lenders" or otherwise), the Commitments of the Lenders shall be deemed terminated.

SECTION 9. THE ADMINISTRATIVE AGENT; THE ARRANGERS; THE MANAGERS

9.1 Appointment and Authority.

(a) Each of the Lenders and the Issuing Lender hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Without limitation on the foregoing, the Lenders hereby authorize the execution by the Administrative Agent of the Project Lender Intercreditor Agreement and the Retail Intercreditor Agreement. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and no other Person shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (in its capacities as a Lender, Swing Line Lender (if applicable), potential Hedge Bank and potential Cash Management Bank) and the Issuing Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.5 for purposes of holding or

enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 10.5(e), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

(c) The Administrative Agent is further authorized by the Lenders to enter into amendments to this Agreement or any other Loan Documents with the Loan Parties for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any other Loan Document to which it is a party (without any consent or approval by the Lenders).

9.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.3 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in

good faith shall be necessary, under the circumstances as provided in Sections 10.1 and 8) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by Borrowers, a Lender or the Issuing Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Section 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.6 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrowers, to appoint a successor, which shall be a bank with an office in the

United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lender under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.5 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Lender and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender and Swing Line Lender, (ii) the retiring Issuing Lender and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

9.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall

from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Managers, Arrangers, Documentation Agents or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Lender hereunder.

9.9 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any of the Companies, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lender and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lender and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lender and the Administrative Agent under Sections 2.8, 3.9, 3.10, and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.8 and 10.4.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Issuing Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the Issuing Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or the Issuing Lender or in any such proceeding.

9.10 Collateral and Guarantee Matters. The Lenders and the Issuing Lender irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or otherwise transferred as part

of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.1;

(b) to release any Guarantor from its Guarantee Obligations if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder;

(c) to subordinate any Lien on any Property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such Property that is permitted by Section 7.3 and which is entitled to priority over the Liens securing the Obligations pursuant to the terms of this Agreement or any other Loan Document or to the extent such Property may be Disposed of in accordance with Section 7.5 to the Person acquiring such Property thereunder;

(d) to release or subordinate any Lien on any Property granted to or held by the Administrative Agent under any Loan Document which is disposed of in accordance with Section 7.5;

(e) to release the Parent Guaranty in accordance with its terms on following the Parent Guaranty Release Date, or to confirm the release of any Completion Guaranty in accordance with the terms of the Disbursement Agreement;

(f) to consent to (and execute, where appropriate) (i) adjustments to the configuration, location and size of the parcels which collectively constitute the Site (via subdivision, lot line adjustment or the like), (ii) the grant of easements or other similar rights to accommodate the Access Road, (iii) the creation of air rights parcels in connection with the creation of the Condo Units and to the grant of easements and covenants, conditions, restrictions and declarations in favor of the ultimate purchasers of the Condo Units; (iv) non-disturbance agreements in favor of tenants under leases or subleases in respect of portions of the Site, and (v) conveyance of strips or gores of land required to be conveyed to public agencies or quasi-public agencies for pedestrian walkways, sky bridges, roads, or other public purposes, in each case to the extent approved by the Administrative Agent in its discretion;

(g) to amend the Deed of Trust to accommodate any amendments to the parcels described therein based upon adjustments described in clause (f)(i) above or any inaccuracies or adjustments to such parcels which result from the failure of the Project (as constructed) to conform to the exact dimensions of the Retail Air Space Parcels as configured on the Closing Date (either because the floors constructed in the Project are of a higher or lower elevation, the outer walls are in a different location, or the parcels with respect thereto are in a different configuration than the parcels so described on the Closing Date), so long as the square footage or dimensions of the Retail Air Space Parcels are not increased by more than 5%; and

(h) to subordinate the Deed of Trust to any reciprocal easement agreements, covenants, and other similar rights reasonably acceptable to the Administrative Agent which are requested by the Companies to accommodate the creation of the Access Road or the declaration or any easements, covenants, conditions or restrictions associated with the Condo Units and related common areas.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its Guarantee Obligations pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its Guarantee Obligations, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Withholdings.

(a) To the extent required by any applicable law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the forms or other documentation required by Section 2.18(f) are not delivered to the Administrative Agent, then the Administrative Agent may withhold from any interest payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

(b) If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

(c) If any Lender sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.18(f) and this Section 9.11.

SECTION 10. MISCELLANEOUS

10.1 Amendments and Waivers. Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1 or as permitted by Section 9.1(c). The Required Lenders and each other Person party to the relevant Loan Document may, or (with the written consent of the Required Lenders) the Administrative Agent and each other Person party to the relevant Loan Document may, from time to time, (x) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the other Persons hereunder or thereunder or (y) waive, on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences.

Notwithstanding the foregoing provisions of this Section 10.1, no such waiver and no such amendment, supplement or modification shall:

(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of any Loan or Reimbursement Obligation, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder or forgive the payment of any interest or fee payable hereunder (including any fee under Section 2.10(b)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the consent of each Lender (other than a Defaulting Lender) directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); provided that with the consent of the Required Lenders, the initial application of the Condo Sales Performance Adjustment may be deferred by up to three months;

(ii) amend, modify or waive any provision of this Section or reduce any percentage specified in the definition of Required Lenders, Required Facility Lenders, or Applicable Facility Lenders, consent to the assignment or transfer by any Person (other than a Lender) of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a significant Guarantor from its guarantee obligations under the Loan Documents, in each case without the consent of all Lenders (other than Defaulting Lenders); provided that any Completion Guaranty may be released with the consent of the Required Lenders at any time following the Opening Date;

(iii) amend, modify or waive any provision of Section 9 without the consent of Administrative Agent (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1);

(iv) amend, modify or waive any provision of Section 2.5 or 2.6 without the written consent of the Swing Line Lender (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1);

(v) amend, modify or waive any provision of Section 2.11 or Section 2.23 without the consent of the Required Facility Lenders with respect to the Facility directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1);

(vi) amend, modify or waive any provision of Section 3 without the consent of the Issuing Lender (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1);

(vii) except to the extent permitted by the Disbursement Agreement on the Closing Date, amend, modify or waive the provisions of the Disbursement Agreement to the extent such provisions require the full expenditure of amounts on deposit in the Equity Funding Account and Second Mortgage Proceeds Account in advance of expenditures from the Bank Proceeds Account without the prior written consent of all

Lenders; or

(viii) amend the provisions of Section 2.24 without the consent of each Lender directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1).

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Companies, the Lenders, the Administrative Agent, the Arrangers, the Managers and all future holders of the Loans and Letters of Credit. In the case of any waiver, the Companies, the Lenders, the Arrangers, the Managers and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section; *provided*, that delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

Subject to subsection (vii) above, to the extent the Administrative Agent is entitled or required to make any determinations (whether a consent, waiver or otherwise) under the Intercreditor Agreements or the Disbursement Agreement, the Administrative Agent shall be entitled make any determinations in the exercise of its discretion, *provided* that the Administrative Agent shall not waive the conditions to Advances pursuant to Section 3.3 of the Disbursement Agreement other than 3.3.1, 3.3.4 (in respect of attachments to or certifications made in the Advance Request), 3.3.5, 3.3.6, 3.3.14, 3.3.15, 3.3.16, 3.3.17, 3.3.19, and 3.3.22 without the consent of the Required Lenders.

10.2 Notices; Effectiveness; Electronic Communications.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrowers, the Administrative Agent, the Issuing Lender or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.2; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Banking Day for the

recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b). Each Borrower (and by executing the each of the respective Loan Documents to which it is a party, each other Party) hereby irrevocably appoints either of the other Borrower as its agent for the purpose of receiving notices required hereunder, and agrees that Borrowers conclusively shall be deemed to have received any such notice when notice has been given to any Borrower.

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Section 2 if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Banking Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF FONTAINEBLEAU MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM FONTAINEBLEAU MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH FONTAINEBLEAU MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, the Issuing Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrowers' or the Administrative Agent's transmission of Fontainebleau Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender,

the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Borrowers, the Administrative Agent, the Issuing Lender and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Borrowers, the Administrative Agent, the Issuing Lender and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Fontainebleau Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to Borrowers or their securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, Issuing Lender and Lenders. The Administrative Agent, the Issuing Lender and the Lenders shall be entitled to rely and act upon any notices (including telephonic Advance Requests) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Borrower shall, absent gross negligence and willful misconduct, indemnify the Administrative Agent, the Issuing Lender, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent, any Arranger, any Manager or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the

Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan or L/C Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding (other than Letters of Credit that have been Cash Collateralized).

10.5 Expenses; Indemnity; Damage Waiver.

(a) Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Arranger, any Manager and any of their respective Affiliates (including the reasonable fees, charges and disbursements of counsel for each such party), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Arranger, any Manager, any Lender or the Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Arranger, any Manager, any Lender or the Issuing Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Arranger, any Manager, any Lender or the Issuing Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by Borrowers. Each Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Manager, each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Substances on or from any property owned or operated by the Project Entities, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the

foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any such Borrowers' or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the Issuing Lender or any Related Party of any of the foregoing (and without limiting their obligation to do so), each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender or such Related Party, as the case may be (but without affecting the Borrowers' obligation to make such payments), such Lender's Aggregate Exposure Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that (i) the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Lender in connection with such capacity, and (ii) to the extent indemnification of the Issuing Lender is required pursuant to this Section 10.05(e), such obligation will be limited to Revolving Lenders only. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.23(g).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, Borrowers shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Banking Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the Issuing Lender and the Swing Line Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.6 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrowers and their Affiliates may not assign or otherwise transfer any of its rights or obligations under the Loan Documents without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.6(b), (ii) by way of participation in accordance with the provisions of Section 10.6(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.6(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Lender and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.6(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1,000,000, in the case of any assignment in respect of any Facility; provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Person that is a Lender with a Commitment in respect of the Revolving Facility or Delay Draw Term Loans, an Affiliate of such Lender or an Approved Fund with respect to such Lender (or, in the case of assignments of Term Loans, Conversion Term Loans or funded Delay Draw Term Loans, any Lender);

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender with a Commitment in respect of the Revolving Facility or Delay Draw Term Loans, an Affiliate of such Lender or an Approved Fund with respect to such Lender (or, in the case of assignments of Term Loans, Conversion Term Loans or funded Delay Draw Term Loans, any Lender); and

(C) the consent of the Issuing Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 (but such fee shall not be duplicative as to any concurrent assignments to two or more Approved Funds of the same Lender); provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Borrowers. No such assignment shall be made to any Borrower or any of Borrowers' Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be

made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.17, 2.18, 2.19, and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.6(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrowers or the Administrative Agent, sell participations to any Person (other than a natural person or any Borrower or any of Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrowers, the Administrative Agent, the Lenders and the Issuing Lender shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Sections 10.1(i) and (ii) that affects such Participant. Subject to subsection (c) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.17, 2.18

(so long as such Participant has complied with the requirements thereof), and 2.19 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7(b) as though it were a Lender, provided such Participant agrees to be subject to Section 2.24 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrowers' prior written consent. A Participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of Section 2.18 unless Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrowers, to comply with Sections 2.18(f) and (g) as though it were a Lender.

(f) Certain Pledges. Any Lender may, without the consent of the Borrowers or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as Issuing Lender or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitments and Revolving Loans pursuant to Section 10.6(b), Bank of America may, (i) upon 30 days' notice to Borrowers and the Lenders, resign as Issuing Lender and/or (ii) upon 30 days' notice to Borrowers, resign as Swing Line Lender. In the event of any such resignation as Issuing Lender or Swing Line Lender, Borrowers shall be entitled to appoint from among the Lenders a successor Issuing Lender or Swing Line Lender hereunder; provided, however, that no failure by Borrowers to appoint any such successor shall affect the resignation of Bank of America as Issuing Lender or Swing Line Lender, as the case may be. If Bank of America resigns as Issuing Lender, it shall retain all the rights, powers, privileges and duties of the Issuing Lender hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Lender and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 3.3. If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation,

including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.6. Upon the appointment of a successor Issuing Lender and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender or Swing Line Lender, as the case may be, and (b) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

10.7 Adjustments; Set-off.

(a) [Reserved]¹

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to Borrowers, any such notice being expressly waived by Borrowers to the extent permitted by applicable law, upon any amount becoming due and payable by Borrowers hereunder (whether at the stated maturity, by acceleration or otherwise), to (when any Event of Default has occurred and remains continuing) set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of Borrowers. Each Lender agrees to notify promptly Borrowers and the Administrative Agent after any such setoff and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.8 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with Borrowers and the Administrative Agent.

10.9 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.10 Integration. Other than the promises, undertakings, representations or warranties set forth in the Administrative Agent Fee Letter and the Facility Fee Letter, this Agreement and the other Loan Documents represent the agreement of Borrowers, the Administrative Agent, the Arrangers, the Managers and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, any Arranger, any Manager, or any Lender relative to the subject matter

¹ Note to readers – this Section deleted as duplicative of Section 2.24.

hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.11 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

10.12 Submission To Jurisdiction; Waivers. Each Borrower hereby irrevocably and unconditionally;

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

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

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to that Borrower at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

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

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

10.13 Certain Matters Affecting Lenders.

(a) If (i) the Nevada Gaming Authorities determine that any Lender does not meet suitability standards prescribed under the Nevada Gaming Laws or (ii) any other gaming authority with jurisdiction over the gaming business of Borrowers determines that any Lender does not meet its suitability standards (in any such case, a "Former Lender"), the Administrative Agent shall have the right (but not the duty) to a substitute Person (in each case, a "Substitute Lender") which may be any Lender or Lenders or Approved Fund of a Lender that agrees to become a Lender and to assume the rights and obligations of the Former Lender, subject to receipt by the Administrative Agent of evidence that such Substitute Lender (if not a Lender or Lenders or Approved Fund of a Lender) is an Eligible Assignee. The Substitute Lender shall assume the rights and obligations of the Former Lender under this Agreement. Borrowers shall bear the reasonable costs and expenses of any Lender required by the Nevada Gaming Authorities, or any other gaming authority with jurisdiction over the gaming business of

Borrowers, to file an application for a finding of suitability in connection with the investigation of an application by Borrowers for a license to operate a gaming establishment.

(b) Notwithstanding the provisions of subsection (a) of this Section 10.13, if any Lender becomes a Former Lender, and if the Administrative Agent fails to find a Substitute Lender pursuant to subsection (a) of this Section 10.13 within any time period specified by the appropriate gaming authority for the withdrawal of a Former Lender (the "Withdrawal Period"), Borrowers shall immediately prepay in full the outstanding amount of all Revolving Extensions of Credit, Conversion Term Loans and Term Loans of such Former Lender, together with accrued interest thereon to the earlier of (x) the date of payment or (y) the last day of the applicable Withdrawal Period.

10.14 Acknowledgments. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that:

(a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers, are arm's-length commercial transactions between Borrowers and their Affiliates, on the one hand, and the Administrative Agent, the Lenders, the Arrangers and the Managers, on the other hand, (ii) Borrowers have consulted legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) Borrowers are capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents;

(b) (i) the Administrative Agent, the Arrangers, and the Managers each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any other Person and (ii) neither the Administrative Agent, the Lenders, the Arrangers, nor the Managers has any obligation to the Loan Parties or any other Person with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents;

(c) the Administrative Agent, the Lenders, the Arrangers, the Managers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Companies and the other Loan Parties, and neither the Administrative Agent, any of the Lenders, any of the Arrangers, nor any of the Managers has any obligation to disclose any of such interests to any Person; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Arrangers, the Administrative Agent, the Managers and the Lenders or among the Loan Parties and the Lenders.

To the fullest extent permitted by law, each of Borrowers, hereby waives and releases any claims that it may have against the Administrative Agent, the Lenders, the Arrangers, the Managers and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.15 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrowers and their obligations, (g) with the consent of Borrowers or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the Issuing Lender acknowledges that (a) the Information may include material non-public information concerning a Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Requirement of Law, including United States Federal and state securities laws.

10.16 Release of Collateral and Guarantee Obligations.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of Borrowers in connection with any Disposition of Property permitted by the Loan Documents, the Administrative Agent shall (without the consent of any Lender, or any affiliate of any Lender that is a party to any Specified Hedge Agreement) take such actions as shall be required to release its security interest in any Collateral being Disposed of in such Disposition, and to release any guarantee obligations of any Person being Disposed of

in such Disposition, to the extent necessary to permit consummation of such Disposition in accordance with the Loan Documents, provided that Borrowers have delivered to the Administrative Agent, at least five Banking Days prior to the date of the proposed release (or such shorter period as is agreed to by the Administrative Agent in its sole discretion), a written request for release identifying the relevant Collateral being Disposed of in such Disposition and the terms of such Disposition in reasonable detail, including the date thereof, the price thereof and any expenses in connection therewith, together with a certification by Borrowers stating that such transaction is in compliance with this Agreement and the other Loan Documents and that the proceeds of such Disposition will be applied in accordance with this Agreement and the other Loan Documents.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than Obligations consisting of contingent reimbursement or indemnification obligations and Obligations in respect of any Specified Hedge Agreement or Specified Cash Management Agreement) have been paid in full, all Commitments have terminated or expired and no Letter of Credit or Reimbursement Obligation shall be outstanding (other than Letters of Credit which have been Cash Collateralized), upon request of Borrowers, the Administrative Agent shall (without notice to or vote or consent of any Lender, or any affiliate of any Lender that is a party to any Specified Hedge Agreement or Specified Cash Management Agreement) take such actions as shall be required to release the security interest of the Loan Documents in all Collateral, and to release all guarantee obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Obligations in respect of Specified Hedge Agreements or Specified Cash Management Agreements.

10.17 Accounting Changes. In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then Borrowers and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating Companies' financial condition (including the requirements and restrictions associated with the provisions of this Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by Borrowers, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

10.18 Delivery of Lender Addenda. Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, Borrowers and the Administrative Agent.

10.19 Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision)

be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

10.20 Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to the Administrative Agent, the Issuing Lender or any Lender, or the Administrative Agent, the Issuing Lender or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the Issuing Lender or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the Issuing Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing Lender under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.21 Replacement of Lenders. Borrowers may, at their sole expense and effort, upon notice to any affected Lender and the Administrative Agent, require a Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.6), all of its interests, rights and obligations under this Agreement and the related Loan Documents at par (including all of its outstanding Loans and Commitments, if any) to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment) if any of the following occur:

(a) such Lender requests compensation under Section 2.17, or if Borrowers are required to pay any additional amount to such Lender or any Governmental Authority for the account of such Lender pursuant to Section 2.18 or Section 2.20;

(b) such Lender is a Defaulting Lender; or

(c) such Lender does not consent to any proposed amendment, modification, termination, waiver or consent as contemplated by clauses (i), (ii) or (vii) of the second paragraph of Section 10.1 where the consent of the Required Lenders has been obtained;

in each case provided that:

(i) the Borrowers shall concurrently exercise their rights under this Section 10.21 in respect of all Lenders in respect of which they are entitled to exercise such rights (and, in the case of clause (c), to assignee Lenders which will approve the requested amendment, modification waiver or consent);

(ii) Borrowers shall have paid to the Administrative Agent the assignment fee specified in Section 10.6(b)(iv) and, in the case of any Lender holding Term Loans that is being required to assign its interest, rights and obligations under this

Agreement pursuant to clause (c) above as a result of a proposed amendment, modification, termination, waiver or consent that would result in the reduction of the interest rate than applicable to the Term Loans, and to the extent prior to the first anniversary of the Opening Date, the prepayment premium required by Section 2.10(b):

(iii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.19) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrowers (in the case of all other amounts);

(iv) in the case of any such assignment resulting from a claim for compensation under Section 2.17 or payments required to be made pursuant to Section 2.18, such assignment will result in a reduction in such compensation or payments thereafter;

(v) such assignment does not conflict with applicable Requirements of Law; and

(vi) no Default or Event of Default shall have occurred and remain continuing.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply.

10.22 WAIVERS OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.23 Gaming Authorities. The Arrangers, the Administrative Agent and each Lender agree to cooperate with the Nevada Gaming Authorities in connection with the administration of their regulatory jurisdiction over the other Loan Parties, including, without limitation, to the extent not inconsistent with the internal policies of such Lender, Arranger, Agent or Manager and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Nevada Gaming Authorities

relating to the Administrative Agent, the Arrangers, any of the Lenders, or any Loan Party, or the Loan Documents. The obligations of the Administrative Agent, the Arrangers and the Lenders under this Section are subject to the receipt by them of any requested authorization from the Loan Parties to cooperate with the Nevada Gaming Authorities as described above.

10.24 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

10.25 Joint and Several.

(a) Borrowers shall be obligated for all of the Obligations outstanding under the Commitments, Loans and the related Notes, Letters of Credit and Swing Line Loans from time to time on a joint and several basis, notwithstanding which of Borrowers may have directly received the proceeds of any particular Loan.

(b) Each Borrower acknowledges and agrees that, for purposes of the Loan Documents, Borrowers constitute a single integrated financial enterprise and that each receives a benefit from the availability of credit under this Agreement to all of Borrowers. Each Borrowers waives all defenses arising under the laws of suretyship, to the extent such laws are applicable, in connection with its joint and several obligations under this Agreement. Without limiting the foregoing, each of the Borrowers agrees to the Joint Borrower Provisions set forth in Exhibit J, incorporated by this reference.

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IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

FONTAINEBLEAU LAS VEGAS, LLC,
a Nevada limited liability company

and

FONTAINEBLEAU LAS VEGAS II, LLC,
a Florida limited liability company

By: Fontainebleau Las Vegas Holdings, LLC,
Managing Member of each of the foregoing

By: Fontainebleau Resort Properties I, LLC, its
Managing Member

By: Fontainebleau Resort Holdings, LLC, its
Managing Member

By: Fontainebleau Resorts, LLC, its
Managing Member

By:

Name: Jeffrey Saffer

Title: Executive Chairman

[Credit Agreement
(Senior Bank Facility)]

BANK OF AMERICA, N.A.,
as Administrative Agent

By: Donna F. Kimbrough
Name: Donna F. Kimbrough
Title: Assistant Vice President

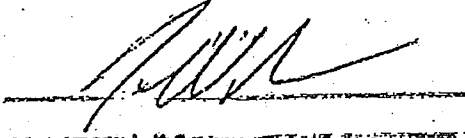
(Credit Agreement
(Senior Bank Facility))

BANK OF AMERICA, N.A., as a Lender, as Issuing Lender,
and as Swing Line Lender

By:

Name:

Title:



Jeff Susman
Senior Vice President

(Credit Agreement
(Secured Bank Facility))

EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each]¹ Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each]² Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]³ hereunder are several and not joint.]⁴ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the "Credit Agreement"), or if not set forth therein, the meanings given them in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness, receipt of a copy of each of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including, without limitation, the Letters of Credit and the Swing Line Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement and any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and

- ¹ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.
- ² For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.
- ³ Select as appropriate
- ⁴ Include bracketed language if there are either multiple Assignors or multiple Assignees.

assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest". Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: _____

2. Assignee[s]: _____

[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrowers: Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: Credit Agreement, dated as of June 6, 2007, among Fontainebleau Las Vegas, LLC, and Fontainebleau Las Vegas II, LLC, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, Lender, Issuing Lender, and Swing Line Lender

6. Assigned Interest:

<u>Assignor[s]⁵</u>	<u>Assignee[s]⁶</u>	<u>Facility Assigned⁷</u>	<u>Aggregate Amount of Commitment/Loans for all Lenders⁸</u>	<u>Amount of Commitment /Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans⁹</u>	<u>CUSIP Number</u>
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

[7. Trade Date: _____]¹⁰

⁵ List each Assignor, as appropriate.

⁶ List each Assignee, as appropriate.

⁷ Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment", "Delay Draw Commitment", "Conversion Term Loans", "Delay Draw Term Loans", "Initial Term Loans", etc.).

⁸ Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

⁹ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

¹⁰ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Title: _____

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Title: _____

[Consented to]¹¹ and Accepted:

BANK OF AMERICA, N.A., as
Administrative Agent

By: _____
Title: _____

[Consented to:]¹²

By: _____
Title: _____

¹¹ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

¹² To be added only if the consent of the Borrowers and/or other parties (e.g. Swing Line Lender, Issuing Lender) is required by the terms of the Credit Agreement.

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

I. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrowers, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.1 of the Credit Agreement, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Non-U.S. Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its

own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York without regard to the conflict of law rules thereof other than Section 5-1401 of the New York General Obligations Law.

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to the Credit Agreement, dated as of June 6, 2007 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, the "Borrowers"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Credit Agreement or if not set forth therein the meanings given to them in the Disbursement Agreement.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the chief [executive] [financial] officer of the Companies, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Companies, and that:

[Use following paragraph 1 for fiscal year-end financial statements]

1. The Companies have delivered the year-end audited consolidated balance sheet and the related audited consolidated statement of income and of cash flow of Las Vegas Holdings as required by Section 6.1(a)(i) of the Credit Agreement for the fiscal year of Las Vegas Holdings ended as of the above date; together with the report and opinion of an independent certified public accountant required by such section.

[Use following paragraph 1 for fiscal quarter-end financial statements]

1. The Companies have delivered the unaudited consolidated balance sheet and related consolidated statement of income and cash flows required by Section 6.1(a)(ii) of the Credit Agreement for the fiscal quarter of Las Vegas Holdings ended as of the above date.

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Companies during the accounting period covered by such financial statements.

[select one:]

3. [To the knowledge of the undersigned, during such fiscal period each of the Loan Parties performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default or Event of Default has occurred and is continuing.]

--OF--

[To the knowledge of the undersigned, the following covenants or conditions have not been performed or observed and the following is a list of each such Default or Event of Default and its nature and status.]

4. The representations and warranties of the Borrowers contained in Section 4.1(c) of the Credit Agreement, as applied to the financial statements referred to in paragraph 1 above, are true and correct as of the Financial Statement Date referred to above.

5. The financial covenant analyses and information set forth on Schedule 1 attached hereto are true and accurate as of the Financial Statement Date referred to above.

6. The undersigned is executing this compliance certificate and making the certifications contained herein, not in an individual capacity, but in the undersigned's capacity as a Responsible Officer of the Companies.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____

[Insert Name] the chief [executive] [financial] officer
of the Companies

For the Quarter/Year ended _____
("Financial Statement Date")

SCHEDULE I
to the Compliance Certificate
(\$ in 000's)

[Include Paragraph I only after the occurrence of the First Test Date]

I. Section 7.1(a) Total Leverage Ratio. The Total Leverage Ratio, as of the date of determination (the "Test Date"), was: _____:1.00.

Maximum Permitted Total Leverage Ratio: _____¹:1.00

The Total Leverage Ratio is calculated as follows:

(a) Consolidated Total Debt as of the Test Date:² \$ _____

divided by

(b) EBITDA for the twelve month period ending on the Test Date (the "Test Period") (as determined below)³: \$ _____

equals Total Leverage Ratio _____ :1.00

EBITDA Calculation.

For the Test Period, calculated without duplication:

(a) Consolidated Net Income: \$ _____

¹ Insert applicable requirement from Section 7.1(a) of the Credit Agreement.

² Consolidated Total Debt is, as of any date, the aggregate principal amount of all Indebtedness of Las Vegas Holdings and its Subsidiaries at such date of the types described in clauses (a) through (f) of the definition of "Indebtedness" in the Credit Agreement, determined on a consolidated basis in accordance with GAAP, but excluding (i) any Indebtedness of the types described in Sections 7.2(f) and 7.2(j) of the Credit Agreement, and (ii) any Indebtedness of the type described in clause (f) of the definition of "Indebtedness" in the Credit Agreement, to the extent not required by GAAP to be quantified on the balance sheet of Las Vegas Holdings and its Subsidiaries at such date (as opposed to merely being a footnote thereto).

³ Provided that in the case of the first three full Fiscal Quarters following the Opening Date, EBITDA shall be annualized on a straight line basis for the period consisting of each of the full Fiscal Quarters beginning after the Opening Date (without regard to any partial prior Fiscal Quarters).

plus (b) to the extent deducted in calculating Consolidated Net Income, income tax expense or the Tax Amount (whether or not paid during such Test Period): \$ _____

plus (c) to the extent deducted in calculating Consolidated Net Income, Consolidated Interest Expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associates with Indebtedness: \$ _____

plus (d) to the extent deducted in calculating Consolidated Net Income, depreciation and amortization expense: \$ _____

plus (e) to the extent deducted in calculating Consolidated Net Income, amortization of intangibles (including goodwill): \$ _____

plus (f) to the extent deducted in calculating Consolidated Net Income, any extraordinary expenses or losses: \$ _____

plus (g) to the extent deducted in calculating Consolidated Net Income, pre-opening expenses related to the opening of the Project to the extent not in excess of those contemplated by the Resort Budget: \$ _____

plus (h) to the extent deducted in calculating Consolidated Net Income, the aggregate net non-cash loss on the Disposition of Property other than Condo Units by the Companies (other than sales of inventory in the ordinary course of business): \$ _____

plus (i) to the extent deducted in calculating Consolidated Net Income, any cash or non-cash expense relating to or loss resulting from marketing, development or Disposition of Condo Units: \$ _____

plus (j) to the extent deducted in calculating Consolidated Net Income, Subordinated Affiliate Expenses⁴: \$ _____

plus (k) to the extent deducted in calculating Consolidated Net Income, other non-cash items reducing such Consolidated Net Income (excluding any such non-cash

⁴ Subordinated Affiliate Expenses means, collectively, the Credit Enhancement Fees, the Construction Fees, Completion Guaranty Reimbursement Obligations, the Funds Costs and Allocated Overhead Expense.

item to the extent it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period): \$ _____

plus (l) to the extent deducted in calculating Consolidated Net Income, Designated Equity Contributions received during that period (to the extent designated by Borrowers on a timely basis in accordance with the definition thereof as an addition to EBITDA): \$ _____

minus: (m) to the extent included in the calculation of such Consolidated Net Income, interest income: \$ _____

minus (n) to the extent included in the calculation of such Consolidated Net Income, any extraordinary income or gains: \$ _____

minus (o) to the extent included in the calculation of such Consolidated Net Income, the aggregate net non-cash gain on the Disposition of Property other than Condo Units by the Companies (other than sales of inventory in the ordinary course of business): \$ _____

minus (p) to the extent included in the calculation of such Consolidated Net Income, cash or non cash gain resulting from the Disposition of Condo Units: and \$ _____

minus (q) to the extent included in the calculation of such Consolidated Net Income, other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period): \$ _____

Equals EBITDA \$ _____
 [(a)+(b)+(c)+(d)+(e)+(f)+(g)+(h)+(i)+(j)+(k)+(l)-(m)-(n)-(o)-(p)-(q)]

[Include Paragraph II only after the occurrence of the First Test Date]

II. Section 7.1(b) – First Lien Leverage Ratio. The First Lien Leverage Ratio, as of the Test Date, was _____:1.00.

Maximum First Lien Leverage Ratio Permitted: _____⁵:1.00

The First Lien Leverage Ratio is calculated as follows:

As of the Test Date:

(a) Consolidated First Lien Debt as of the Test Date (as determined below): \$ _____

divided by

(b) EBITDA for the Test Period (as calculated above):⁶ \$ _____

equals First Lien Leverage Ratio [(a)÷(b)] _____:1.00

Consolidated First Lien Debt Calculation.

As of the Test Date:

(a) The aggregate outstanding principal amount of the Indebtedness existing under the Credit Agreement: \$ _____

plus (b) the aggregate principal amount of any outstanding Indebtedness of the Companies (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 7.3(c) of the Credit Agreement in an aggregate principal amount not to exceed \$25,000,000 at any one time outstanding: \$ _____

Equals Consolidated First Lien Debt Calculation [(a)+(b)] \$ _____

[Include Paragraph III only after the occurrence of the First Test Date]

III. Section 7.1(c) -- Fixed Charge Coverage Ratio. The Fixed Charge Coverage Ratio, as of the Test Date, was _____:1.00.

Minimum Fixed Charge Coverage Ratio Permitted: _____⁷:1.00

⁵ Insert applicable requirement from Section 7.1(b) of the Credit Agreement.

⁶ Provided that in the case of the first three full Fiscal Quarters following the Opening Date, EBITDA shall be annualized on a straight line basis for the period consisting of each of the full Fiscal Quarters beginning after the Opening Date (without regard to any partial prior Fiscal Quarters).

The Fixed Charge Coverage Ratio is calculated as follows:

As of the Test Date:

(a)	EBITDA for the Test Period (as calculated above):	\$ _____
<u>divided by</u>		
(b)	Fixed Charges for the Test Period (as determined below): ⁸	\$ _____
<u>equals</u>	Fixed Charge Coverage Ratio [(a)+(b)]	_____ :1.00

Fixed Charges Calculation.

For the Test Period, the sum (without duplication) of:

(a)	Consolidated Interest Expense for such period:	\$ _____
<u>plus</u> (b) scheduled payments made during such period on account of principal of Indebtedness of Las Vegas Holdings and its Subsidiaries:		
		\$ _____
<u>plus</u> (c) provision for cash income taxes made by Las Vegas Holdings and its Subsidiaries on a consolidated basis in respect of such period and the payment of any Tax Amount during such period:		
		\$ _____
<u>plus</u> (d) Maintenance Capital Expenditures for such period and:		
		\$ _____
<u>plus</u> (e) Consolidated Lease Expense for such period.		
		\$ _____
<u>Equals Fixed Charges</u>		\$ _____
[(a)+(b)+(c)+(d)+(e)]		

IV. Section 7.2 -- Indebtedness.

A. As of the Test Date, Indebtedness of the Companies under the Second Mortgage Indenture and any Permitted Refinancing Indebtedness incurred to refund, refinance or replace such Indebtedness was \$ _____.

⁷ Insert applicable requirement from Section 7.1(c) of the Credit Agreement.

⁸ Provided that in the case of the first three full Fiscal Quarters following the Opening Date, both the numerator and the denominator of this ratio will be determined for each of the full Fiscal Quarters beginning following the Opening Date (without regard to any prior Fiscal Quarters).

Maximum Permitted: \$675,000,000

B. As of the Test Date, the aggregate principal amount of Indebtedness of the Companies (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 7.3(c) of the Credit Agreement was: \$ _____

Maximum Permitted: \$25,000,000

B As of the Test Date, the aggregate principal amount of Subordinated Debt of the Companies was: \$ _____

Maximum Permitted: \$25,000,000⁹

C. As of the Test Date, which Test Date is on or prior to the Final Completion Date, the aggregate amount of Guarantee Obligations represented by performance bonds, guaranties, bankers' acceptances or similar instruments issued by a Person other than any Company for the benefit of a trade creditor of any such Company was \$ _____

Maximum Permitted: \$10,000,000¹⁰

D. As of the Test Date, which Test Date is after the Project Entities have notified the Disbursement Agent that the Completion Date will occur within 60 days, the aggregate amount of Guarantee Obligations represented by performance bonds, guaranties, bankers' acceptances or similar instruments issued by a Person other than any Company for the benefit of a trade creditor of any such Company was \$ _____

Maximum Permitted: \$5,000,000¹¹

E. As of the Test Date, the aggregate principal amount (for all the Companies) of additional Indebtedness of the Company (not otherwise permitted under Section 7.2(a)-(j)) was: \$ _____

Maximum Permitted: \$5,000,000

⁹ Provided that the Net Cash Proceeds of such Subordinated Debt are applied as required by Section 2.11 of the Credit Agreement.

¹⁰ Provided that (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of the Companies supported thereby consist solely of payment obligations with respect to costs incurred in accordance with the Resort Budget which would otherwise be permitted to be paid pursuant to the Disbursement Agreement, and (2) are secured solely by Liens permitted by Section 7.3(o) of the Credit Agreement.

¹¹ Provided that (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of the Companies supported thereby (1) are not Project Costs and (2) if secured, are secured solely by the Liens permitted by Section 7.3(p) of the Credit Agreement.

V. Section 7.7 - Capital Expenditures As of the Test Date (which Test Date is after the Opening Date), the aggregate amount of Capital Expenditures made during the applicable Fiscal Year (without taking into consideration any Capital Expenditures permitted pursuant to clauses (a) or (c) of Section 7.7 of the Credit Agreement) was \$ _____.

Maximum Permitted: \$30,000,000¹²

[Use following paragraph for fiscal financial statements delivered on June 30 and December 31 commencing with the first such date that is at least six full calendar months following the Opening Date]

VI. Section 2.11(a)(vi) - Excess Cash Flow The amount of the prepayment required by reason of Excess Cash Flow for the Excess Cash Flow Period ending on the Test Date (the "Cash Flow Period) is \$ _____.

Payment Calculation:

(a) Lender Excess Cash Flow Percentage _____ %¹³

multiplied by (b) Excess Cash Flow for the Cash Flow Period¹⁴ \$ _____

¹² Provided that any amount not expended in any Fiscal Year may be carried forward and expended in the following Fiscal Year to the extent expended for improvements at the Retained Site (and any amounts expended in any Fiscal Years shall be allocated to such carry over amounts prior to the \$30,000,000 base amount).

¹³ Insert applicable percentage from defined term based on Total Leverage Ratio (calculated above).

¹⁴ For each Excess Cash Flow Period ending on any December 31, the applicable financial statements shall be the audited financial statements delivered pursuant to Section 6.1(a)(i) of the Credit Agreement. For each Excess Cash Flow Period ending on any June 30, the applicable financial statements shall be the unaudited quarterly financial statements for the Fiscal Quarter ending on that June 30 delivered pursuant to Section 6.1(a)(ii) of the Credit Agreement. It is agreed that in the event that due to any audit adjustments made in connection with any financial statements delivered pursuant to Section 6.1(a)(i) of the Credit Agreement, the amount of the prior Excess Cash Flow payment proves to have been incorrect, then the Excess Cash Flow payment made in respect of the Excess Cash Flow Period then ended will be adjusted (upwards or downwards) as required to correct the amount of the prior payment.

Excess Cash Flow Calculation.

For the Cash Flow Period; provided that the conversion of Revolving Loans to Conversion Term Loans shall not reduce Excess Cash Flow:

(a) EBITDA (calculated below): \$ _____

plus (b) interest income: \$ _____

plus (c) any decrease in Consolidated Working Capital (calculated below)(or minus any increase thereto): \$ _____

plus (d) any increase (or minus any decrease), if any, in the deferred tax account of the Companies: \$ _____

minus (e) Consolidated Interest Expense: \$ _____

minus (f) to the extent paid in cash, debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness: \$ _____

minus (g) to the extent paid in cash, any extraordinary expenses or losses (or plus to the extent paid in cash, any extraordinary income or gains): \$ _____

minus (h) to the extent paid in cash, pre-opening expenses related to the opening of the Project to the extent not in excess of those contemplated in the Resort Budget: \$ _____

minus (i) Designated Equity Contributions to the extent included in arriving at EBITDA: \$ _____

minus (j) income tax expense or the Tax Amount (to the extent paid in cash during such period): \$ _____

minus (k) Capital Expenditures other than Project Costs and Equity Financed Capital Expenditures made in cash: \$ _____

minus (l) Any scheduled amortization and mandatory prepayment of Funded Debt during the Cash Flow Period (other than any prepayments required pursuant to Section 2.11(a)(ii) of the Credit Agreement by reason of Dispositions of Condo Units or pursuant to Section 2.11(a)(vi) of the Credit Agreement by reason of Excess Cash Flow for any prior period): \$ _____

minus (m) the aggregate amount of any proceeds of Asset Sales which are subject to a Reinvestment Notice that are applied to the payment of Capital Expenditures during the Cash Flow Period to the extent such proceeds are included in arriving at EBITDA for the Cash Flow Period: \$ _____

minus (n) Without duplication as to (l), any prepayment of the Revolving Loans and Swing Line Loans during the Cash Flow Period to the extent accompanied by a corresponding permanent reduction in the amount of the Revolving Commitments and all optional prepayments of Term Loans and Conversion Term Loans: \$ _____

Equals Excess Cash Flow \$ _____
 [(a)+(b)+(c)+(d)-(e)-(f)-(g)-(h)-(i)-(j)-(k)-(l)-(m)-(n)]

EBITDA Calculation for the Cash Flow Period.

For the Cash Flow Period, calculated without duplication:

(a) Consolidated Net Income: \$ _____

plus (b) to the extent deducted in calculating Consolidated Net Income, income tax expense or the Tax Amount (whether or not paid during such Cash Flow Period): \$ _____

plus (c) to the extent deducted in calculating Consolidated Net Income, Consolidated Interest Expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associates with Indebtedness: \$ _____

plus (d) to the extent deducted in calculating Consolidated Net Income, depreciation and amortization expense: \$ _____

plus (e) to the extent deducted in calculating Consolidated Net Income, amortization of intangibles (including goodwill): \$ _____

plus (f) to the extent deducted in calculating Consolidated Net Income, any extraordinary expenses or losses: \$ _____

plus (g) to the extent deducted in calculating Consolidated Net Income, pre-opening expenses related to the opening of the Project to the extent not in excess of those contemplated by the Resort Budget: \$ _____

plus (h) to the extent deducted in calculating Consolidated Net Income, the aggregate net non-cash loss on the Disposition of Property other than Condo Units by the Companies (other than sales of inventory in the ordinary course of business): \$ _____

plus (i) to the extent deducted in calculating Consolidated Net Income, any cash or non-cash expense relating to or loss resulting from marketing, development or Disposition of Condo Units: \$ _____

plus (j) to the extent deducted in calculating Consolidated Net Income, Subordinated Affiliate Expenses¹⁵: \$ _____

plus (k) to the extent deducted in calculating Consolidated Net Income, other non-cash items reducing such Consolidated Net Income (excluding any such non-cash item to the extent it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period): \$ _____

plus (l) to the extent deducted in calculating Consolidated Net Income, Designated Equity Contributions received during that period (to the extent designated by Borrowers on a timely basis in accordance with the definition thereof as an addition to EBITDA): \$ _____

minus: (m) to the extent included in the calculation of such Consolidated Net Income, interest income: \$ _____

minus (n) to the extent included in the calculation of such Consolidated Net Income, any extraordinary income or gains: \$ _____

minus (o) to the extent included in the calculation of such Consolidated Net Income, the aggregate net non-cash gain on the Disposition of Property other than Condo Units by

¹⁵ Subordinated Affiliate Expenses means, collectively, the Credit Enhancement Fees, the Construction Fees, Completion Guaranty Reimbursement Obligations, the Funds Costs and Allocated Overhead Expense.

the Companies (other than sales of inventory in the ordinary course of business): \$ _____

minus (p) to the extent included in the calculation of such Consolidated Net Income, cash or non cash gain resulting from the Disposition of Condo Units: and \$ _____

minus (q) to the extent included in the calculation of such Consolidated Net Income, other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period): \$ _____

Equals EBITDA \$ _____
 [(a)+(b)+(c)+(d)+(e)+(f)+(g)+(h)+(i)+(j)+(k)+(l)-(m)-(n)-(o)-(p)-(q)]

Consolidated Working Capital Calculation.

As of the Test Date:

(a) Consolidated Current Assets: \$ _____

minus

(b) Consolidated Current Liabilities: \$ _____

equals Consolidated Working Capital \$ _____

EXHIBIT C

Reserved

EXHIBIT D

FORM OF LENDER ADDENDUM

Reference is made to the Credit Agreement, dated as of June 6, 2007 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"), among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, the "Borrowers"), each lender from time to time party thereto and Bank of America, N.A., as administrative agent (the "Administrative Agent"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Credit Agreement or if not set forth therein the meanings given to them in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness.

Upon execution and delivery of this Lender Addendum by the parties hereto as provided in Section 10.18 of the Credit Agreement, the undersigned hereby becomes a Lender thereunder having the Revolving Commitment, the Delay Draw Commitment and the Initial Term Commitment set forth in Schedule 1 hereto, effective as of the Closing Date. The notice address of the undersigned, which shall serve as the initial notice address of the undersigned for purposes of Section 10.2 of the Credit Agreement, is set forth on the Administrative Questionnaire which has been provided to the Administrative Agent.

THIS LENDER ADDENDUM AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

This Lender Addendum may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page hereof by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Lender Addendum to be duly executed and delivered by their proper and duly authorized officers as of this _____ day of _____, 200__.

Name of Lender

By: _____
Name:
Title:

Accepted and agreed:

FONTAINEBLEAU LAS VEGAS, LLC,

and

FONTAINEBLEAU LAS VEGAS II, LLC,
as the Borrowers

By: Fontainebleau Las Vegas Holdings, LLC,
Managing Member of each of the foregoing

By: Fontainebleau Resort Properties I, LLC,
its Managing Member

By: Fontainebleau Resort Holdings, LLC,
its Managing Member

By: Fontainebleau Resorts, LLC, its
Managing Member

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A.,
as Administrative Agent

By: _____
Name: _____
Title: _____

Schedule 1

COMMITMENTS AND NOTICE ADDRESS

1. Name of Lender: _____
2. Revolving Commitment:
3. Delay Draw Commitment:
4. Initial Term Commitment

EXHIBIT E

FORM OF NOTICE OF BORROWING

_____, 200__

Bank of America, N.A.,
as Administrative Agent
Mail Code: TX1-492-14-11
Bank of America Plaza
901 Main St.
Dallas, TX 75202-3714
Attention: Donna F. Kimbrough

Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC

Ladies and Gentlemen:

Pursuant to Section 2.4 of that certain Credit Agreement, dated as of June 6, 2007 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement or if not set forth therein the meanings given to them in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness), among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, the "Borrowers"), each lender from time to time party thereto and Bank of America, N.A., as administrative agent (the "Administrative Agent"), the Borrowers hereby give the Administrative Agent irrevocable notice that the Borrowers hereby request a Loan under the Credit Agreement, and in that connection set forth below the information relating to such Loan:

1. The Banking Day of the proposed Loan is _____, .. (the "Borrowing Date").
2. The proposed Loan is a [Disbursement Agreement Loan] [Direct Loan].
3. The proposed Loan is [a Delay Draw Loan] [an Initial Term Loan] [a Revolving Loan].
4. The Type of the proposed Loan is a [Base Rate Loan] [Eurodollar Loan].
5. The aggregate amount of the proposed Loan is \$_____.
- [6. The initial Interest Period for each Eurodollar Loan made as part of the proposed Loan is ___ month[s].]

[The Borrowers hereby certify that the following statements are true and correct on the date hereof, and will be true and correct on the Borrowing Date:

(a) Each of the representations and warranties made by each Loan Party in or pursuant to the Loan Documents is true and correct in all material respects on and as of the date hereof as if made on and as of the date hereof, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date.

(b) No Default or Event of Default has occurred and is continuing on the date hereof or will occur immediately after giving effect to the proposed Loan.]¹

The Borrowers agree that, if prior to the Borrowing Date any of the foregoing certifications shall cease to be true and correct, the Borrowers shall forthwith notify the Administrative Agent thereof in writing (any such notice, a "Non-Compliance Notice"). Except to the extent, if any, that prior to the Borrowing Date, the Borrowers shall deliver a Non-Compliance Notice to the Administrative Agent, each of the foregoing certifications shall be deemed to be made additionally on the Borrowing Date as if made on such date.

The undersigned is executing this Notice of Borrowing not in an individual capacity, but in the undersigned's capacity as a Responsible Officer of the Borrowers.

Very truly yours,

FONTAINEBLEAU LAS VEGAS, LLC,

and

FONTAINEBLEAU LAS VEGAS II, LLC

By: Fontainebleau Las Vegas Holdings, LLC,
Managing Member of each of the foregoing

By: Fontainebleau Resort Properties I, LLC, its
Managing Member

By: Fontainebleau Resort Holdings, LLC, its
Managing Member

By: Fontainebleau Resorts, LLC, its Managing
Member

By: _____
Name: _____
Title: _____

¹ Insert these sections if the proposed Loan is a Direct Loan.

EXHIBIT F-1

**INTERCREDITOR AGREEMENT
(Project Lenders)**

**BANK OF AMERICA, N.A.,
as Bank Agent**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee**

June 6, 2007

W02-W1 SF-LARV00160589 20

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**INTERCREDITOR AGREEMENT
(Project Lenders)**

THIS INTERCREDITOR AGREEMENT is made as of June 6, 2007, by and among Bank of America, N.A., as the Administrative Agent acting on behalf of itself and the Bank Lenders pursuant to the Bank Credit Agreement (in such capacity, together with its successors and assigns or replacement in any refinancing, the "Bank Agent"), and Wells Fargo Bank, National Association, in its capacity as Trustee under the Second Mortgage Indenture (in such capacity, together with its successors and assigns, the "Trustee"), with reference to the Master Disbursement Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, including in connection with any refinancing of the Bank Credit Facility, the "Disbursement Agreement") of even date herewith among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively the "Borrowers"), Fontainebleau Las Vegas Holdings, LLC and Fontainebleau Las Vegas Capital Corp. (collectively, the "Issuers"), Fontainebleau Las Vegas Retail, LLC (the "Retail Affiliate" and collectively with the Borrowers and the Issuers, the "Project Entities"), the Funding Agents referred to therein, and Bank of America, N.A., as Disbursement Agent.

The Project Credit Parties (as defined herein) desire to enter into this Agreement in order to set forth certain provisions relating to their respective rights in the Collateral, the exercise of remedies upon the occurrence of an Event of Default, the release of Condo Units following their sale, the application of proceeds of enforcement and certain other matters.

The Project Credit Parties agree as follows:

1. Definitions and General Provisions.

1.1 Definitions. Except as otherwise expressed and *provided* herein, all capitalized terms used in this Agreement and its Exhibits and not otherwise defined herein shall have the meanings given to such terms in the Disbursement Agreement, and the rules of interpretations set forth in Exhibit A to the Disbursement Agreement shall apply.

1.1.1 Other Terms. The following terms shall have the meanings set forth below:

"Account Collateral" or "Accounts Collateral" means, collectively, all of the Accounts and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts and any proceeds of the foregoing, but excludes the Retail Funding Account and the Second Mortgage Proceeds Account. When the term "Collateral" is used in conjunction with any of the foregoing accounts (e.g., the "Bank Proceeds Account Collateral"), said Account Collateral means the specified account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts, and any proceeds of the foregoing except to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement.

"Bank Agent" means Bank of America, N.A. or its successor or assignee, or replacement in any refinancing, in its capacity as Administrative Agent under the Bank Credit Agreement.

"Bank Credit Agreement" means the Credit Agreement of even date herewith, among the Borrowers, the Bank Agent and the Bank Lenders and the other agents, arrangers or financial institutions party thereto, as the same may be amended, amended and restated, supplemented or otherwise modified, including by any agreement extending the maturity thereof or restructuring any portion thereof by the addition of borrowers or guarantors thereunder or increasing the amount thereof or otherwise, any refinancing thereof, whether in full, in part or in multiple parts, whether or not with the same agent or agents or lenders; *provided* that a single representative has been appointed to act as Bank Agent hereunder (including on behalf of the multiple lending groups in the event of a partial refinancing or a refinancing in multiple parts) and such representative executes a joinder agreement in the form of Exhibit A attached hereto agreeing to assume the role of Bank Agent hereunder and to be bound hereby.

"Bank Credit Facility" means the credit facilities made available to the Borrowers by the Bank Lenders pursuant to the Bank Credit Agreement, and any refinancings thereof.

"Bank Financing Agreements" means the Bank Credit Agreement, the Loan Documents referred to in the Bank Credit Agreement, this Agreement, and any other agreement, document or instrument entered into or delivered by one of the Companies on, prior to or after the Closing Date with or to the Bank Agent or the Bank Lenders in connection with the financing of the Project.

"Bank Financing Period" means the period commencing on the date of the Exhaustion of the Second Mortgage Proceeds Account and ending on the date of the Discharge of the Bank Secured Obligations.

"Bank Lenders" means, collectively, (a) the Lenders party to and described in the Bank Credit Agreement, (b) the Specified Hedge Affiliates (as defined in the Bank Credit Agreement) and (c) the Specified Cash Management Affiliates (as defined in the Bank Credit Agreement), or their successors or assignees in such capacities, as the case may be, under the Bank Credit Agreement.

"Bank Proceeds Account Collateral" means the Bank Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts, and any proceeds of the foregoing except to the extent such proceeds are deposited into another account or otherwise released pursuant to the terms of the Disbursement Agreement.

"Bank Secured Obligations" means all Obligations (as defined in the Bank Credit Agreement) of the Companies to the Bank Agent and the Bank Lenders under the Bank Credit Facility, the Bank Security Documents and the other Bank Financing Agreements, including, without limitation, Obligations in respect of Interest Rate Agreements (as defined in the Bank Credit Agreement), but only to the extent that the Bank Credit Agreement permits such Interest Rate Agreement Obligations to be secured by the Bank Security Documents.

"Bank Security Documents" means the Security Documents (as defined in the Bank Credit Agreement) and any other guaranties, deeds of trust, security agreements or control agreements executed from time to time by any guarantor or pledgor to guaranty or secure the obligations under the Bank Credit Facility.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors now or hereafter in effect.

"Blocking Event" means (a) the occurrence of an Event of Default under Section 8(a) or (to the extent the same occurs in respect of one or more of the Companies) Section 8(f) of the Bank Credit Agreement as in effect on the date hereof or any comparable provision in any future Bank Credit Agreement hereunder, or (b) that the Bank Secured Obligations have become due and payable in full (whether at maturity, upon acceleration or otherwise).

"Collateral" means the following unique and separate categories of property encumbered to secure the Obligations to any of the Secured Lenders: (a) the Resort Collateral, (b) the Separate Proceeds Accounts Collateral and (c) the Pledged Stock.

"Companies" means, collectively, the Borrowers, the Issuers and any Affiliate of the Borrowers or the Issuers that has incurred any Obligations or pledged any Collateral under any Financing Agreement, or any additional borrower or guarantor under the Bank Credit Facility.

"Completion Guarantor" means Turnberry Residential Limited Partner, L.P., a Delaware limited partnership, or any successor or permitted assignee.

"Completion Guaranty" means the Completion Guaranty of even date herewith executed by the Completion Guarantor in favor of the Bank Agent and the Trustee.

"Condo Closing Agent" means Nevada Title Company, or another independent servicer or closing agent for Condo Unit sales which is reasonably acceptable to the Bank Agent.

"Condo Unit" means a condominium or condotel unit in the Project.

"Credit Bid Rights" means, in respect of any order relating to a sale of assets in any Insolvency or Liquidation Proceeding, that:

- (a) such order grants the Second Mortgage Holders (individually and in any combination) the right to bid at the sale of such assets and the right to offset such Second Mortgage Holders' claims secured by Liens upon such assets against the purchase price of such assets if:
 - (i) the bid of such Second Mortgage Holders is the highest bid or otherwise determined by the court to be the best offer at the sale; and
 - (ii) the bid of such Second Mortgage Holders includes a cash purchase price component payable at the closing of the sale in an amount that would be sufficient on the date of the closing of the sale to achieve the Discharge of the Bank Secured Obligations and to

satisfy all Liens entitled to priority over the Liens securing the Bank Secured Obligations that attach to the proceeds of the sale, if such amount were applied on the date of the sale to the payment in cash of:

- (A) all unpaid Bank Secured Obligations;
 - (B) all unpaid claims secured by any such Liens entitled to priority over the Liens securing the Bank Secured Obligations; and
 - (C) all claims and costs, including those incurred in connection with the sale by the Bank Agent or the Bank Lenders, required by such order to be paid from the proceeds of the sale in priority over the Bank Secured Obligations, whether or not the order requires or permits such amount to be so applied; and
- (b) such order allows the claims of the Second Mortgage Holders in such Insolvency or Liquidation Proceeding to the extent required for the grant of such rights.

"Default" means an event that, with the giving of notice or the passage of time, would constitute an Event of Default.

"Default Purchase Option" means the option granted to the Second Mortgage Holders pursuant to Section 6 hereof to purchase the Bank Secured Obligations.

"Disbursement Agent" means Bank of America, N.A. and any successor Disbursement Agent.

"Disbursement Agreement Default" means the occurrence and continuance of an Event of Default under, and as defined in, the Disbursement Agreement.

"Disbursement Agreement Default Date" means the date upon which a Disbursement Agreement Default occurs.

"Discharge" means (a) in respect of the Bank Credit Facility, the termination of all commitments to extend credit under the Bank Credit Facility, payment in full in cash of the principal of and interest and premium (if any) on all Bank Secured Obligations, termination, cancellation or expiration of all letters of credit issued under the Bank Credit Facility and payment in full in cash of all other Bank Secured Obligations that are unpaid at the time the principal and interest are paid in full in cash and (b) in respect of the Second Mortgage Notes, payment in full in cash of the principal of and interest and premium (if any) on all Second Mortgage Secured Obligations and payment in full in cash of all other Second Mortgage Secured Obligations that are unpaid at the time the principal and interest are paid in full in cash.

"Event of Default" means, as the context requires, (i) a Disbursement Agreement Default, or (ii) the occurrence and continuance of an "Event of Default" by or with respect to the Companies under the applicable Financing Agreement that has not been waived by the applicable Project Credit Party.

"Facility" means, as the context requires, any or all of the Bank Credit Facility and the Second Mortgage Facility.

"Facility Agreements" means, collectively, the Bank Credit Agreement and the Second Mortgage Indenture.

"Guarantor" has the meaning given in the Bank Credit Agreement.

"Insolvency or Liquidation Proceeding" means (1) any case commenced by or against any of the Companies under the Bankruptcy Code, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of any of the Companies, any receivership or assignment for the benefit of creditors relating to any of the Companies or any similar case or proceeding relative to any of the Companies or their creditors, as such, in each case whether or not voluntary; (2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to any of the Companies, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or (3) any other proceeding of any type or nature in which substantially all claims of creditors of any of the Companies are determined and any payment or distribution is or may be made on account of such claims.

"Miami Bank Agent" means Bank of America, N.A., or its successor or assignee in its capacity as administrative agent under the Miami Credit Agreement.

"Miami Bank Credit Facility" means the credit facilities made available to the Miami Borrowers pursuant to the Miami Credit Agreement, and any refinancings thereof.

"Miami Bank Lenders" means, collectively, (a) the Lenders (as defined in the Miami Credit Agreement), (b) the Hedge Banks (as defined in the Miami Credit Agreement) and (c) the Cash Management Banks (as defined in the Miami Credit Agreement), or their successors or assignees in such capacities, as the case may be, under the Miami Credit Agreement.

"Miami Borrowers" means Fontainebleau Florida Hotel, LLC, a Delaware limited liability company, and Fontainebleau Florida Tower 2, LLC, a Delaware limited liability company.

"Miami Credit Agreement" means the Third Amended and Restated Credit Agreement of even date herewith, by and among the Miami Borrowers, the Miami Bank Agent and the lenders from time to time party thereto.

"Miami Parent Bank Guaranty" means the Guaranty of even date herewith executed by Parent in favor of the Miami Bank Agent and the Miami Bank Lenders, and any replacements thereof benefiting the Miami Bank Credit Facility.

"Miami Resort Properties I Guaranty" means the Guaranty of even date herewith executed by Resort Properties I in favor of the Miami Bank Agent and the Miami Bank Lenders, and any replacements thereof benefiting the Miami Bank Credit Facility.

"Parent" means Fontainebleau Resorts, LLC, a Delaware limited liability company.

"Parent Bank Guaranty" means the Guaranty of even date herewith executed by Parent in favor of the Bank Agent and the Bank Lenders.

"Parent Second Mortgage Guaranty" means the Guaranty of even date herewith executed by Parent in favor of the Trustee and the Second Mortgage Holders.

"Pledged Stock" has the meaning given in the Bank Credit Agreement.

"Project Credit Parties" means the Bank Agent and the Trustee.

"Real Property Foreclosure Notice" means a notice of default which must be recorded in the official real property records of Clark County, Nevada, in order to commence non-judicial foreclosure of a Deed of Trust in accordance with applicable Nevada law.

"Resort Collateral" means, at any given time, all real and personal property encumbered to secure the Bank Secured Obligations under the Bank Security Documents and the Second Mortgage Secured Obligations under the Second Mortgage Security Documents *other than* the Separate Proceeds Accounts Collateral and the Pledged Stock.

"Resort Properties I" means Fontainebleau Resort Properties I, LLC, a Delaware limited liability company.

"Resort Properties I Bank Guaranty" means the Guaranty of even date herewith executed by Resort Properties I in favor of the Bank Agent and the Bank Lenders.

"Resort Properties I Second Mortgage Guaranty" means the Guaranty of even date herewith executed by Resort Properties I in favor of the Trustee and the Second Mortgage Holders.

"Second Mortgage Facility" means the financing made available to the Issuers by the Second Mortgage Holders pursuant to the Second Mortgage Indenture and any refinancings thereof.

"Second Mortgage Financing Agreements" means the Second Mortgage Indenture, the Second Mortgage Notes, the Disbursement Agreement, this Agreement, the Second Mortgage Security Documents and any other agreement, document or instrument entered into or delivered by any of the Companies on, prior to or after the Closing Date with or to the Trustee or the Second Mortgage Holders in connection with the financing of the Project.

"Second Mortgage Proceeds Account Collateral" means the Second Mortgage Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any

investments of such amounts, and any proceeds of the foregoing except to the extent such proceeds are deposited into another account or otherwise released pursuant to the terms of the Disbursement Agreement.

"Second Mortgage Secured Obligations" means all Obligations of the Companies under the Second Mortgage Indenture, the Second Mortgage Notes, the Second Mortgage Security Documents and the other Second Mortgage Financing Agreements.

"Second Mortgage Security Documents" means any guaranties, deeds of trust, security agreements or control agreements executed from time to time by any guarantor or pledgor to guaranty or secure the obligations under the Second Mortgage Notes.

"Secured Lenders" means the Bank Agent, the Bank Lenders and the Trustee (for its benefit and the benefit of the Second Mortgage Holders).

"Secured Obligations" means the Bank Secured Obligations or the Second Mortgage Secured Obligations, as the context requires.

"Separate Proceeds Accounts Collateral" means, collectively, the Second Mortgage Proceeds Account Collateral and the Bank Proceeds Account Collateral.

"Trustee" means Wells Fargo Bank, National Association, or its successor or assignee, not in its individual capacity but solely in its capacity as Trustee under the Second Mortgage Indenture.

1.2 Interpretation. To the extent that reference is made in this Agreement to any term defined in, or to any other provision of, any other agreement, such term or provision shall continue to have the original meaning thereof notwithstanding any termination, expiration or amendment of such other agreement; *provided, however*, that to the extent that the Disbursement Agreement or any other agreement to which all of the Project Credit Parties are parties is amended in accordance with the terms thereof and hereof, then any references herein to such terms and provisions of such document shall be to such terms or provisions as so amended; *provided, further, however*, that to the extent that this Agreement or the Second Mortgage Indenture allows for the amendment of any Second Mortgage Security Documents without the consent of the Trustee, any references herein to the terms and provisions of such document shall be to such terms or provisions as so amended.

2. Collateral, Priority of Liens and Subordination.

2.1 Liens and Security Interests. The Project Credit Parties agree that each Secured Lender shall have the benefit of the following Liens on and security interests in the Collateral:

2.1.1 Collateral for Bank Secured Obligations. The Bank Secured Obligations shall be secured by (a) an exclusive first priority Lien on and security interest in the Bank Proceeds Account Collateral and the Pledged Stock and (b) a first priority Lien on and security interest in the Resort Collateral.

2.1.2 Collateral for Second Mortgage Secured Obligations. The Second Mortgage Secured Obligations shall be secured by (a) an exclusive first priority Lien on and security interest in the Second Mortgage Proceeds Account Collateral and (b) a second priority Lien on and security interest in the Resort Collateral, which second priority Lien and security interest shall be subject and subordinate to the prior Lien and security interest in the Resort Collateral securing the Bank Secured Obligations.

2.1.3 Resort Collateral Lien Subordination. The Trustee hereby agrees that the Liens on the Resort Collateral securing the Second Mortgage Secured Obligations are and shall be subordinate and junior to the Liens on the Resort Collateral securing the Bank Secured Obligations, irrespective of the time, order or manner of the filing, recording or other perfection of such Liens, or any failure of the Bank Agent to obtain perfection of its Liens.

2.1.4 Other Collateral Lien Subordination. The Trustee hereby agrees that if any Liens are hereafter granted by Fontainebleau Las Vegas Holdings, LLC or any of its Subsidiaries to the Trustee to secure the Second Mortgage Secured Obligations (other than Liens on the Second Mortgage Proceeds Account Collateral), the Bank Agent shall be entitled to receive Liens on the same property and such Liens of the Trustee shall be subordinate and junior to the Liens therein of the Bank Agent, irrespective of the time, order or manner of the filing, recording or other perfection of such Liens, or any failure of the Bank Agent to obtain perfection of its Liens. The Bank Agent hereby agrees that any Liens that are hereafter granted by Fontainebleau Las Vegas Holdings, LLC or any of its Subsidiaries to the Bank Agent to secure the Bank Secured Obligations (other than the Bank Proceeds Account Collateral and the Pledged Stock) shall also be granted to the Trustee to secure the Second Mortgage Secured Obligations and such Liens of the Bank Agent shall be senior to the Liens therein of the Trustee, irrespective of the time, order or manner of the filing, recording or other perfection of such Liens, or any failure of the Bank Agent or the Trustee to obtain perfection of its Liens

2.2 Agreement to Subordinate Liens on FF&E Collateral. The Project Credit Parties acknowledge that, after the date hereof, the Borrowers may enter into an additional financing arrangement (the "FF&E Financing") with one or more lenders or an agent on their behalf (the "FF&E Lenders") relative to the Project that will be collateralized primarily by a first priority Lien on and security interest on a portion of the furniture, fixtures and equipment (including gaming equipment) that are or will be acquired by the Borrowers in connection with the construction and development of the Project (the "FF&E Collateral"). It is acknowledged that the property constituting the FF&E Collateral would otherwise be a portion of the Resort Collateral and subject to the Lien priorities established by this Agreement.

The Project Credit Parties agree that, concurrently with the closing of any FF&E Financing and so long as the principal amount of the FF&E Financing does not exceed \$25,000,000, they will enter into an intercreditor or subordination agreement (the "FF&E Intercreditor Agreement") with the FF&E Lenders that are providing the FF&E Financing which is in form and substance acceptable to the Bank Agent (with the determination of such terms by the Bank Agent being binding upon the Trustee), *provided* that the subordination of the Liens held by the Trustee in the FF&E Collateral pursuant to the FF&E Intercreditor Agreement shall be substantively identical to the subordination of the Liens held by the Bank Agent and the priority of the Liens in the FF&E Collateral shall be: FF&E Lenders first, the Bank Agent second and the Trustee third (it

being understood that any prerogatives to be exercised by the Project Credit Parties under the FF&E Intercreditor Agreement shall be exercised exclusively by the Controlling Person under the Disbursement Agreement). The Trustee agrees that it shall enter into the FF&E Intercreditor Agreement (without the requirement of any further approval from the Second Mortgage Holders) promptly and in any event within 5 Business Days of the date of a written request from the Companies. The Trustee agrees that in the event that the Bank Agent releases its Liens on the FF&E Collateral in connection with the consummation of the FF&E Financing (in lieu of entering into the FF&E Intercreditor Agreement), then the Trustee shall release its Liens on the FF&E Collateral to the same extent as the Bank Agent within 5 Business Days of the date of a written notice from the Bank Agent requesting such release and confirming that the Bank Agent is taking the same action with respect to the Bank Agent's Liens on the FF&E Collateral as is being requested of the Trustee with respect to the Trustee's Liens on the FF&E Collateral.

2.3 Separate Proceeds Accounts Collateral and Pledged Stock. The Second Mortgage Proceeds Account Collateral secures only the Second Mortgage Secured Obligations, and no other Project Credit Party shall have any Liens thereon or any security interest therein. The Bank Proceeds Account Collateral and the Pledged Stock secure only the Bank Secured Obligations, and no other Project Credit Party shall have any Liens thereon or any security interest therein.

2.4 Confirmation of Liens. Each Project Credit Party hereto hereby confirms and agrees that the Liens and security interests held by or for the benefit of each Secured Lender in the Collateral, as provided for in the preceding provisions of this Section 2 shall secure all Obligations of the Companies now or hereafter owing to each Secured Lender in connection with the applicable Facility throughout the term of this Agreement, in each case with the priority specified in Section 2.1, notwithstanding (a) the availability of any other collateral to any Secured Lender, (b) the actual date and time of execution, delivery, recording, filing and perfection of any of the Security Documents, or (c) the fact that any Lien or security interest created by any of the Security Documents, or any claim with respect thereto, is or may be subordinated, avoided or disallowed in whole or in part under the Bankruptcy Code. All provisions of this Agreement, including but not limited to, all matters relating to the creation, validity, perfection, priority, subordination and release of the Liens and security interests intended to be created by the Security Documents and all provisions regarding the allocation and priority of payments with respect to any Facility shall survive any Insolvency or Liquidation Proceeding and be fully enforceable by and against each Project Credit Party hereto during any such proceeding. In the event of an Insolvency or Liquidation Proceeding, each Project Credit Party further confirms and agrees that the Obligations due and outstanding under and with respect to each Facility shall include all principal, additional advances permitted hereunder, Protective Advances made by such Project Credit Party, interest, default interest, LIBOR breakage and swap breakage, post petition interest and all other amounts due thereunder, for periods before and for periods after the commencement of any such proceedings, even if the claim for such amounts is disallowed pursuant to applicable law, and all proceeds from the sale or other disposition of the Collateral shall be paid to the Secured Lenders in the order and priority provided for in this Section 2 notwithstanding the disallowance of any such claim or the invalidity or subordination of any Lien on or security interest in the Collateral under applicable law.

3. Rights and Limitation of Actions With Respect to Collateral.

3.1 Rights and Limitations Applicable to Second Mortgage Holders.

3.1.1 Subject to Section 3.1.2, during the Bank Financing Period, the Trustee shall not, and shall not authorize or direct any Person acting for it or any Second Mortgage Holder to, exercise any right or remedy with respect to any Collateral (including any right of set-off) or take any action to enforce, collect or realize upon any Collateral, including, without limitation, any right, remedy or action to:

- (a) take possession of or control over any Collateral;
- (b) exercise any collection rights in respect of any Collateral;
- (c) exercise any right of set-off against any property subject to any Lien securing the Bank Secured Obligations;
- (d) foreclose upon any Collateral or take or accept any transfer of title in lieu of foreclosure upon any Collateral;
- (e) enforce any claim to the proceeds of insurance upon any Collateral;
- (f) deliver any notice, claim or demand relating to the Collateral to any Person (including any securities intermediary, depository bank or landlord) in the possession or control of any Collateral or acting as bailee, custodian or agent for the Bank Agent or any Bank Lender in respect of any Collateral;
- (g) otherwise enforce any remedy available upon default for the enforcement of any Lien upon the Collateral;
- (h) commence any proceeding for any of the foregoing purposes, including the recording of a Real Property Foreclosure Notice;
- (i) seek relief in any Insolvency or Liquidation Proceeding permitting it to do any of the foregoing, except as expressly permitted hereunder; or
- (j) subject to Section 3.2.3, retain any proceeds of accounts receivable and other obligations receivable owing to the Companies and paid to it directly by any account debtor;

provided that the foregoing shall not be construed to limit the Trustee's right to deliver notices of default to the Issuers pursuant to the Second Mortgage Indenture or deliver notices to the Second Mortgage Holders.

3.1.2 Notwithstanding Section 3.1.1, any right or remedy set forth in clauses (a) through (j) thereof may be exercised and any such action may be taken, authorized or instructed:

(a) if all the Bank Secured Obligations are purchased by one or more Persons upon exercise of the Default Purchase Option;

(b) as necessary to redeem any Collateral in a creditor's redemption permitted by law or to deliver (subject to the prior Discharge of the Bank Secured Obligations) any notice or demand necessary to enforce any right to claim, take or receive proceeds of Collateral remaining after the Discharge of the Bank Secured Obligations in the event of foreclosure or other enforcement of any Lien securing the Bank Secured Obligations, so long as the enforcement of any such Lien securing the Bank Secured Obligations is not adversely affected or delayed;

(c) in respect of the Second Mortgage Proceeds Collateral;

(d) as necessary to perfect a Lien upon any Collateral (other than the Bank Proceeds Account Collateral and the Pledged Stock) by any method of perfection except through possession or control;

(e) subject to all the other provisions of this Agreement, as necessary to prove (but not enforce) the Liens securing the Second Mortgage Secured Obligations or as necessary to preserve or protect (but not enforce) the Liens securing the Second Mortgage Secured Obligations in any manner that is not adverse to the grant, perfection, priority or enforcement of Liens securing the Bank Secured Obligations and does not adversely affect or delay any exercise or enforcement of the rights and remedies of the Bank Agent and the Bank Lenders; or

(f) after obtaining the prior written consent of the Bank Agent.

3.1.3 Nothing in this Agreement or any other Financing Agreement shall:

(a) impair as between the Companies and the Second Mortgage Holders, the obligation of the Issuers and all other Companies that are guarantors, which is absolute and unconditional, to pay principal of, premium and interest and Liquidated Damages (as defined in the Second Mortgage Indenture), if any, on the Second Mortgage Notes in accordance with their terms or any other obligation of the Issuers or any of the other Companies under the Second Mortgage Financing Agreements;

(b) affect the relative rights of the Second Mortgage Holders vis a vis creditors of the Companies (other than the Bank Agent and the Bank Lenders and as set forth in Section 2.2);

(c) restrict the right of the Second Mortgage Holders to sue for payments that are then due and owing, exercise remedies against the Second Mortgage Proceeds Collateral or accelerate the Second Mortgage Secured Obligations; or

(d) prevent the Trustee or any Second Mortgage Holder from exercising any rights or remedies they may have against the Issuers or any of the other Companies, subject to the rights of the Bank Agent and the Bank Lenders hereunder and

the obligations of the Trustee and the Second Mortgage Holders hereunder, including without limitation the obligations under Section 3.1.1.

3.2 Rights and Limitations Applicable to the Bank Lenders.

3.2.1 Subject to Sections 3.2.2 and 3.2.3, at all times during the Bank Financing Period the Bank Agent and the Bank Lenders shall have the exclusive right to manage, perform and enforce the terms of the Bank Security Documents with respect to all Collateral and to exercise and enforce all privileges and rights thereunder according to their discretion and exercise of their business judgment, including, without limitation, the exclusive right to take the actions enumerated in clauses (a) through (j) of Section 3.1.1. Without limiting the generality of the foregoing, at all times during the Bank Financing Period:

(a) the Bank Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards in the event of any covered loss, theft or destruction or condemnation of any Collateral and all claims under insurance constituting Collateral;

(b) subject to Section 5.12 of the Disbursement Agreement, all proceeds of insurance on or constituting Collateral and all condemnation awards resulting from a taking of any Collateral will inure to the benefit of, and will be paid to, the Bank Agent and the Bank Lenders; and

(c) the Trustee will turn over to the Bank Agent any insurance or condemnation proceeds received by the Trustee promptly after receipt of a written request from the Bank Agent therefor.

In connection therewith, the Trustee waives any and all rights to affect the method or challenge the appropriateness of any action by the Bank Agent and the Bank Lenders and subject to Sections 3.2.2. and 3.2.3, hereby consents to each of the Bank Agent and the Bank Lenders exercising or not exercising such rights and remedies as if no Lien securing the Second Mortgage Secured Obligations existed, except only that the Trustee reserves all rights granted by law (i) to request or receive notice of any sale of Collateral in foreclosure of any Lien securing the Bank Secured Obligations and (ii) to redeem any Collateral or enforce any right to claim, take or receive proceeds of Collateral remaining after the Discharge of the Bank Secured Obligations as provided in Section 3.1.2(b)

3.2.2 Notwithstanding Section 3.2.1, if (a) an Event of Default shall occur under the Bank Credit Agreement and (b) on the date of such occurrence the aggregate outstanding amount of Bank Secured Obligations is no greater than \$100,000,000, then neither the Bank Agent nor the Bank Lenders shall be entitled to complete a foreclosure against or other realization upon any portion of the Collateral that is material or essential to the construction or operation of the Project earlier than 180 days after the Bank Agent provides to the Trustee the notice contemplated in Section 3.3 in respect of such Event of Default.

3.2.3 (a) Notwithstanding Sections 3.1.1(c) and 3.2.1, the Trustee and the Second Mortgage Holders shall be permitted to receive and retain, free from any Liens or

security interests in favor of the Bank Agent or the Bank Lenders, any and all payments made thereto by or on behalf of the Companies, other than:

- (i) payment of amounts during the Bank Financing Period which constitute proceeds from the sale, transfer or other disposition of any Resort Collateral or proceeds from any insurance policy or condemnation settlement or award, in each case, in respect of any Resort Collateral; and
- (ii) payments obtained or received during the Bank Financing Period in breach of Section 3.1.1(a) through (j).

The foregoing clauses (i) and (ii) shall not, however, prohibit payments to the Second Mortgage Holders consisting of Second Mortgage Proceeds Account Collateral. Any payment received by the Trustee or any Second Mortgage Holder (including, without limitation, payments and prepayments made for application against the Second Mortgage Secured Obligations and all other payments and deposits made pursuant to any provision of the Second Mortgage Indenture or any Second Mortgage Security Documents) during the Bank Financing Period in violation of clauses (i) or (ii) shall be held in trust for the benefit of the Bank Agent and the Bank Lenders and shall be turned over to the Bank Agent promptly upon the Bank Agent's request.

(b) Notwithstanding Section 3.2.1, during the continuance of an Event of Default under the Bank Credit Agreement but so long as a Blocking Event has not occurred, the Bank Agent may seize control of the Accounts, other than the Second Mortgage Proceeds Account, and the Accounts Collateral and issue instructions to the Disbursement Agent or any depository bank or securities intermediary with respect to the Accounts, other than the Second Mortgage Proceeds Account, and the Accounts Collateral; *provided* that in such circumstances the Bank Agent (i) may not apply the Accounts Collateral against Bank Secured Obligations which have not become due and payable and (ii) may not restrict or prohibit the Companies (or the Disbursement Agent or such depository bank or securities intermediary acting at the request of the Companies) from (A) using Project revenues from and after the Opening Date to pay costs and expenses necessary or appropriate, in the reasonable judgment of the Bank Agent, to continue to operate the Project in the ordinary course or (B) using Project revenues to pay scheduled debt service in respect of the Bank Secured Obligations or the Second Mortgage Secured Obligations. None of the foregoing limitations on the Bank Agent's rights and remedies shall apply from and after the occurrence and during the continuance of a Blocking Event.

3.3 Notification of Events of Default. Each Project Credit Party hereby agrees, for the benefit of the other Project Credit Party, to use reasonable efforts to provide written notice to such other Project Credit Party within 10 Business Days after obtaining actual knowledge (in the case of the Bank Agent) or receiving written notice (in the case of the Trustee) of the occurrence or assertion of an Event of Default under their respective Facilities. Neither Project Credit Party shall have any liability to the other for failing to provide any such notice, but such release from liability shall not affect the Bank Agent's and the Bank Lenders' obligation under Section 3.2.2.

3.4 Certain Waivers by Second Mortgage Holders. To the fullest extent permitted by law, the Trustee (on behalf of itself and on behalf of the Second Mortgage Holders) waives and agrees not to assert or enforce at any time during the Bank Financing Period:

(a) any right of subrogation to the rights or interests of the Bank Agent or the Bank Lenders or any claim or defense based upon impairment of any such right of subrogation;

(b) any right of marshalling accorded to a junior lienholder, as against a priority lienholder, under equitable principles; and

(c) any statutory right of appraisal or valuation accorded to a junior lienholder in a proceeding to foreclose a senior Lien,

in each case, that otherwise may be enforceable in respect of any Lien securing the Second Mortgage Secured Obligations as against the Bank Agent or the Bank Lenders.

3.5 Completion Guaranty Subordination and Standstill.

3.5.1 The Trustee agrees that, at any time that the Bank Agent is the Controlling Person with respect to the Completion Guaranty, (a) the rights that the Trustee or the Second Mortgage Holders may have (if any) to receive payments pursuant to the Completion Guaranty, to direct the application of funds disbursed pursuant to the Completion Guaranty, to draw funds under the Completion Guaranty Letter of Credit or to receive and apply proceeds from the Completion Guaranty Proceeds Account shall be subordinated to the prior rights to payment and to direct the disbursement of funds of the Bank Agent and the Bank Lenders therein and (b) the Trustee shall not, and shall not authorize or direct any Person acting for it or any Second Mortgage Holder to, exercise any right or remedy with respect to the Completion Guaranty. Any payment or property received by the Trustee or any Second Mortgage Holder in violation of the preceding sentence shall be held in trust for the benefit of the Bank Agent and the Bank Lenders and shall be turned over to the Bank Agent promptly upon the Bank Agent's written request.

3.5.2 The Bank Agent agrees that, at any time that the Trustee is the Controlling Person with respect to the Completion Guaranty, (a) the rights that the Bank Agent or the Bank Lenders may have (if any) to receive payments pursuant to the Completion Guaranty, to direct the application of funds disbursed pursuant to the Completion Guaranty, to draw funds under the Completion Guaranty Letter of Credit or to receive and apply proceeds from the Completion Guaranty Proceeds Account shall be subordinated to the prior rights to payment and to direct the disbursement of funds of the Trustee and the Second Mortgage Holders therein and (b) the Bank Agent shall not, and shall not authorize or direct any Person acting for it, or any Bank Lender to exercise any right or remedy with respect to the Completion Guaranty. Any payment or property received by the Bank Agent or any Bank Lender in violation of the preceding sentence shall be held in trust for the benefit of the Trustee and the Second Mortgage Holders and shall be turned over to the Trustee promptly upon the Trustee's request.

3.6 Parent Guaranty and Resort Properties I Guaranty Subordination and Standstill. The Trustee agrees that, during the Bank Financing Period, (a) any right that the Trustee or the Second Mortgage Holders may have to receive payments pursuant to the Parent Second Mortgage Guaranty and the Resort Properties I Second Mortgage Guaranty shall be subordinated to the prior rights to payment of the Bank Agent and the Bank Lenders pursuant to the Parent Bank Guaranty and the Resort Properties I Bank Guaranty, respectively, and (b) the

Trustee shall not, and shall not authorize or direct any Person acting for it or any Second Mortgage Holder to, exercise any right or remedy with respect to the Parent Second Mortgage Guaranty or the Resort Properties I Second Mortgage Guaranty. Any payment or property received by the Trustee or any Second Mortgage Holder in violation of the preceding sentence shall be held in trust for the benefit of the Bank Agent and the Bank Lenders and shall be turned over to the Bank Agent promptly upon the Bank Agent's written request.

3.7 Parent Guaranty and Resort Properties I Guaranty Subordination to guaranties of Miami Credit Facility. The Trustee agrees that, at all times that the Miami Bank Credit Facility is in effect, any right that the Trustee or the Second Mortgage Holders may have to receive payments pursuant to the Parent Second Mortgage Guaranty and the Resort Properties I Second Mortgage Guaranty shall be subordinated to the prior rights to payment of the Miami Bank Agent and the Miami Bank Lenders pursuant to the Miami Parent Bank Guaranty and the Miami Resort Properties I Bank Guaranty, respectively. Any payment or property received by the Trustee or any Second Mortgage Holder in violation of the preceding sentence shall be held in trust for the benefit of the Miami Bank Agent and the Miami Bank Lenders and shall be turned over to the Miami Bank Agent promptly upon the Miami Bank Agent's written request.

3.8 Release of Condo Units. The Trustee acknowledges that Condo Units within the Project are to be sold to various purchasers and agrees that, although the Bank Agent shall be entitled to require the payment of specified release prices for the Condo Units, the Trustee shall release its Lien on any particular Condo Unit concurrently with the Bank Agent's release of its Lien without any other conditions. The Trustee authorizes the Bank Agent to select and appoint Nevada Title Company or another Condo Closing Agent to facilitate the concurrent release of the Liens held by the Bank Agent and the Trustee on the Condo Units and related common area spaces (including interests in the air space above the highest point of the Project (the "Condo Rights")) at the time of their sale to purchasers. In furtherance thereof, the Second Deed of Trust contains provisions authorizing the trustee thereunder to release the Liens of the Trustee on any Condo Rights concurrently with the release of the Bank Agent's Liens thereon and without satisfaction of any other conditions or the taking of any action or giving of any consent by the Trustee. The Trustee agrees that it will not amend the Second Deed of Trust or take any other action to contravene or frustrate the intent of the Bank Agent and the Trustee for a concurrent release of their respective Liens on the Condo Rights as set forth above.

3.9 Reparcelization; Releases. The Trustee acknowledges, in order to accommodate the development of the Project (a) the configuration, location and size of the parcels which collectively constitute the Site may be adjusted (via subdivision, lot line adjustment or the like), (b) that easements or other similar rights to accommodate the Access Road may be conveyed to adjacent property owners, (c) that the air rights parcels on which the Condo Units will be located will be created and that easements in favor of the ultimate purchasers of the Condo Units may be created and granted, (d) that non-disturbance agreements in favor of tenants under leases in respect of portions of the Site (including the airspace above the Site) may be required and granted, and (e) that strips or gores of land may be required to be conveyed to public agencies or quasi-public agencies for pedestrian walkways, sky bridges, roads, or other public purposes. In furtherance thereof, the Trustee agrees that, in the event that the Bank Agent subordinates its deed of trust on the Site in connection with any such transaction, or in the event that the Bank Agent partially reconveys its deed of trust to the extent required to accommodate a transaction of the type contemplated above, or in the event that the Bank Agent delivers a subordination, non-

disturbance and attornment agreement to any tenant at the Site, the Trustee shall join in that agreement as an additional party and shall thereby subordinate or partially reconvey the deed of trust securing the Second Mortgage Notes (or agree in respect of such non-disturbance) within 5 Business Days of the date of a written notice from the Bank Agent requesting that the Trustee join such agreement and confirming that the Bank Agent is taking the same action with respect to the Bank Agent's Liens on the Resort Collateral as is being requested of the Trustee with respect to the Trustee's Liens on the Resort Collateral.

4. Rights and Limitations with Respect to Amendments, Waivers and Other Actions Under Facility Agreements.

4.1 [Intentionally Omitted].

4.2 Rights and Limitations Applicable to the Bank Lenders.

4.2.1 The Bank Agent and the Bank Lenders may at any time and from time to time, without the consent of or notice to the Trustee or any Second Mortgage Holder, without incurring any responsibility or liability to the Trustee or any Second Mortgage Holder and without in any manner prejudicing, affecting or impairing the ranking or priority of the Liens and the security interests in the Collateral created by the Bank Security Documents or the rights and obligations of the Project Credit Parties hereunder:

(a) make loans and advances to the Companies or issue, guaranty or obtain letters of credit for the account of the Companies or otherwise extend credit to the Companies in any amount (subject to the provisions of the Second Mortgage Indenture relating to the maximum amount of first priority Lien indebtedness) and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any Default or Event of Default or failure of condition is then continuing;

(b) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, compromise, accelerate, extend or, subject to Section 8.12 hereof, refinance, any Bank Secured Obligations or any agreement, guaranty, Lien or obligation of the Companies or any other Person in any manner related thereto, or otherwise amend, supplement or change in any manner any Bank Secured Obligations or Liens securing Bank Secured Obligations or any such agreement, guaranty, Lien or obligation;

(c) increase or reduce the amount of any Bank Secured Obligation (subject to the provisions of the Second Mortgage Indenture relating to the maximum amount of the first priority Lien indebtedness) or the interest, premium, fees or other amounts payable in respect thereof;

(d) release or discharge any Bank Secured Obligation or any guaranty thereof or any agreement or obligation of the Companies or any other Person with respect thereto;

(e) take or fail to take any first priority Lien or any other collateral security for any Bank Secured Obligation or take or fail to take any action which may be

necessary or appropriate to ensure that any Lien securing a Bank Secured Obligation or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien or to ensure that any proceeds of any property subject to any Lien are applied to the payment of any Bank Secured Obligation or any other obligation secured thereby;

(f) release, discharge or permit the lapse of any or all Liens securing a Bank Secured Obligation at any time;

(g) exercise or enforce, in any manner, order or sequence, or fail to exercise or enforce, any right or remedy against the Borrowers or any Guarantor or any collateral security or any other Person or property in respect of any Bank Secured Obligation or any Lien securing any Bank Secured Obligation or any right or power under the Bank Security Documents and hereunder and apply any payment or proceeds of Collateral in any order of application; or

(h) sell, exchange, release, foreclose upon or otherwise deal with any property that may at any time be subject to any Lien securing any Bank Secured Obligation.

4.2.2 No (a) exercise, delay in exercising or failure to exercise any right arising under the Bank Security Documents or this Agreement, (b) act or omission of the Bank Agent or any Bank Lender in respect of the Companies or any other Person or any collateral security for any Bank Secured Obligation or any right arising under the Bank Security Documents and hereunder, (c) change, impairment, or suspension of any right or remedy of the Bank Agent or any Bank Lender, or (d) other act, failure to act, circumstance, occurrence or event, including, without limitation, the acts listed in Section 4.2.1, which, but for this provision, would or could act as a release or exoneration of the agreements or obligations of the Trustee or any Second Mortgage Holder hereunder shall in any way affect, decrease, diminish or impair any of such agreements or obligations, including, without limitation, the Lien subordination provisions and the standstill obligations set forth in Sections 2.1 and 3.1 hereof.

4.2.3 No amendment, supplement, waiver or change otherwise permitted by the Second Mortgage Indenture in respect of the Bank Security Documents will be prohibited or in any manner restricted or affected by, or by reason of, the provisions of this Agreement.

4.3 **Waivers and Deferrals of Payments.** Any Project Credit Party may, without the consent of the other Project Credit Parties, defer any payments due under its Facility or waive any provisions thereof.

4.4 **Waivers and Amendments Binding on Second Mortgage Holders.**

4.4.1 The Project Credit Parties acknowledge that from and after the Exhaustion of the Second Mortgage Proceeds Account, the Bank Agent will have the exclusive right, without the consent of the Trustee or the Second Mortgage Holders, to amend the Disbursement Agreement or to waive any Default or Event of Default as set forth in Section 11.19 of the Disbursement Agreement (but subject to the exceptions also set forth in such Section 11.19).

4.4.2 The Project Credit Parties agree that from and after the Exhaustion of the Second Mortgage Proceeds Account, without the consent of the Trustee, any amendment, waiver or consent agreed to, upon any terms and conditions, by, on the one hand, any of the Companies that is party to a Bank Security Document and, on the other hand, the Bank Agent and the Bank Lenders, in respect of any provision of any Bank Security Document, will automatically apply, on the same terms and subject to the same conditions to the corresponding provision of the comparable Second Mortgage Security Document. Such application to the Second Mortgage Security Documents shall become effective upon the delivery by the Bank Agent of written notice of such amendment, waiver or consent, and the terms and conditions thereof, to the Trustee, if the notice states that such amendment, waiver or consent has become effective as to such agreement and is, pursuant to this Section 4.4.2 likewise effective as to the corresponding provision of the comparable Second Mortgage Security Document; *provided, however*, that no amendment, waiver or consent of a Bank Security Document which (i) effects or relates to a release of a Lien on the Resort Collateral or (ii) unless the consent of the Trustee is obtained, imposes additional affirmative obligations on the Trustee or limits or otherwise affects any indemnification or limitation of liability of the Trustee shall apply to or otherwise amend or affect any Second Mortgage Security Document. Any such amendment, waiver or consent need not otherwise be confirmed by the Trustee or any Second Mortgage Holder in order to be effective; *provided* that at the written request of the Bank Agent, the Trustee shall countersign any such amendment, waiver or consent.

4.5 Limitation of Liability

4.5.1 Except as expressly set forth herein, (a) none of the Bank Agent or any Bank Lender will have any duty, express or implied, fiduciary or otherwise, to the Trustee or any Second Mortgage Holder and (b) none of the Trustee or any Second Mortgage Holder will have any duty, express or implied, fiduciary or otherwise, to the Bank Agent or any Bank Lender.

4.5.2 None of the Bank Agent, the Bank Lenders, the Trustee, the Second Mortgage Holders, nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so, except to the extent arising out of the gross negligence or willful misconduct of the Bank Agent or any such Bank Lender, the Trustee or any Second Mortgage Holder, as applicable, or any of their respective directors, officers, employees or agents, or will be under any obligation to sell or otherwise dispose of any Collateral upon the request of any of the Companies or upon the request of any other Person (including the Trustee, the Second Mortgage Holders, the Bank Agent and the Bank Lenders, as applicable) or to take any other action whatsoever with regard to the Collateral or any part thereof.

4.5.3 The Bank Agent and the Bank Lenders, on the one hand, and the Second Mortgage Holders, on the other hand, shall each be responsible for keeping themselves informed of the financial condition of the Companies and all other circumstances bearing upon the risk of nonpayment of the Bank Secured Obligation or Second Mortgage Secured Obligations, as the case may be. Except as set forth in Section 3.3, the Bank Agent and the Bank Lenders shall have no duty to advise the Trustee or any Second Mortgage Holder of information regarding such condition or circumstances or as to any other matter. If the Bank Agent or any Bank Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to

the Trustee or any Second Mortgage Holder it shall be under no obligation to provide any similar information on any subsequent occasion, to provide any additional information, or undertake any investigation, or to disclose any information which, pursuant to accepted or reasonable commercial finance practice, it wishes to maintain confidential.

5. Insolvency or Liquidation Proceedings

5.1 Right to File Involuntary Bankruptcy. Notwithstanding any other provision of this Agreement to the contrary, any Secured Lender shall be entitled, at any time and upon its sole discretion, to initiate or join as a petitioning creditor in an involuntary Insolvency or Liquidation Proceeding against any of the Companies; *provided* that the foregoing shall not be construed as an authorization by the Companies to initiate or join any such proceeding or otherwise to impose any restrictions on the rights of the Companies.

5.2 Certain Agreements and Consents by the Trustee and Second Mortgage Holders.

5.2.1 At no time during the Bank Financing Period shall the Trustee or any Second Mortgage Holder:

(a) request judicial relief in an Insolvency or Liquidation Proceeding or in any other court that would (i) hinder, delay, limit or prohibit the exercise or enforcement of any right or remedy otherwise available to the holders of Bank Secured Obligations, (ii) limit, invalidate, avoid or set aside any Lien securing the Bank Secured Obligations or any Bank Security Document, (iii) subordinate the Liens securing the Bank Secured Obligations to the Liens securing the Second Mortgage Secured Obligations (other than in respect of the Second Mortgage Proceeds Account Collateral) or (iv) grant the Liens securing the Second Mortgage Secured Obligations (other than in respect of the Second Mortgage Proceeds Account Collateral) equal ranking to the Liens securing the Bank Secured Obligations;

(b) oppose or otherwise contest any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement of Liens securing the Bank Secured Obligations made by any holder of Bank Secured Obligations in any Insolvency or Liquidation Proceeding;

(c) oppose or otherwise contest any exercise by any holder of Bank Secured Obligations of the right to credit bid Bank Secured Obligations at any sale in foreclosure of the Liens securing the Bank Secured Obligations; or

(d) oppose or otherwise contest any other request for judicial relief made in any court by any holder of Bank Secured Obligations relating to the enforcement of any Lien securing the Bank Secured Obligations.

5.2.2 If, in any Insolvency or Liquidation Proceeding during the Bank Financing Period, the Bank Agent and the Bank Lenders:

(a) consent to any order for use of cash collateral for payment of (i) expenses reasonably necessary or appropriate for the conduct of the Project or for the preservation of the Collateral, (ii) debt secured by Liens upon the Collateral that are senior to the Liens securing the Second Mortgage Secured Obligations or (iii) administrative expenses arising in connection with the Insolvency or Liquidation Proceeding;

(b) consent to any order granting any priming Lien, replacement Lien, cash payment or other relief on account of Bank Secured Obligations as adequate protection (or its equivalent) for the interests of the Bank Agent and the Bank Lenders in property subject to the Liens securing the Bank Secured Obligations in connection with any order for use of cash collateral; or

(c) consent to any order relating to any sale of assets of any of the Companies and providing, to the extent the sale is to be free and clear of Liens, that all such Liens shall attach to the proceeds of the sale, and, in connection therewith, consent to and support before the court any request for Credit Bid Rights made by the Trustee or any Second Mortgage Holder (except that the Bank Agent and Bank Lenders need not admit, consent to or support any valuation of the Collateral alleged in support of the allowance of any secured claim based upon the Liens securing the Second Mortgage Secured Obligations);

then, so long as the Bank Agent and the Bank Lenders do not oppose or otherwise contest any request made by the Trustee or any Second Mortgage Holder (which may be made only if, pursuant to any such order, the Bank Agent and the Bank Lenders are, or are to be, granted a Lien upon any property) for the grant to the Trustee, for the benefit of the Second Mortgage Holders and as adequate protection (or its equivalent) for the Trustee's interest in the Collateral pursuant to the Liens securing the Second Mortgage Secured Obligations, of a junior Lien upon such property that is co-extensive in all respects with, but subordinated (as set forth herein) in all respects to, all Liens securing the Bank Secured Obligations upon such property and any such Lien granted to the Bank Agent and the Bank Lenders pursuant to such order, the Trustee and the Second Mortgage Holders will not oppose or otherwise contest the entry of such order, except that any such order relating to a sale of assets may be opposed or otherwise contested by them (x) as necessary to secure the grant of Credit Bid Rights or (y) based on any ground that may be asserted by a holder of unsecured claims (but not, except for Credit Bid Rights, on any grounds arising from or relating to any Lien securing the Second Mortgage Secured Obligations or any secured claim or secured creditor rights based on any Lien securing the Second Mortgage Secured Obligations).

5.2.3 If, in any Liquidation or Insolvency Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of the Bank Secured Obligations and on account of the Second Mortgage Secured Obligations, then, to the extent the debt obligations distributed on account of the Bank Secured Obligations and on account of the Second Mortgage Secured Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

5.2.4 The Trustee and the Second Mortgage Holders will not assert or enforce, at any time during the Bank Financing Period, any claim under §506(c) of the Bankruptcy Code with respect to the Liens securing the Bank Secured Obligations for costs or expenses of preserving or disposing of any Collateral.

5.2.5 If, for purposes of valuation of the secured claims of the Bank Agent and Bank Lenders in any Insolvency or Liquidation Proceeding, the Bank Agent and Bank Lenders determine, and the Bank Agent notifies the Trustee, that the Collateral should be valued as of any particular time in the period from the date of commencement of such Insolvency or Liquidation Proceeding to the date of confirmation of any plan of reorganization or other dispositive restructuring plan therein, then the Trustee and the Second Mortgage Holders shall not oppose or otherwise contest that the date as of which such secured claims should be valued is the date chosen by the Bank Agent and Bank Lenders, but the Trustee and the Second Mortgage Holders shall remain free (a) to contest without any restriction any valuation claimed or asserted by the Bank Agent or the Bank Lenders as of such date and (b) to assert and seek relief determining that the Collateral should be valued at another date if a valuation at the other date would have the effect of placing a higher value upon the Collateral, taken as a whole. Notwithstanding the foregoing, the Trustee and the Second Mortgage Holders shall not have the right to assert the lack of adequate protection of their Liens or the collateral securing the Second Mortgage Notes as a basis for opposing a motion or other relief sought in any Insolvency or Liquidation Proceeding and approved by the Bank Lenders.

5.2.6 If, in connection with the approval by creditors of any plan of reorganization or other dispositive restructuring plan in any Insolvency or Liquidation Proceeding, either:

(a) secured claims based upon the Second Mortgage Secured Obligations and secured claims based upon the Bank Secured Obligations are classified in the same class of secured claims; or

(b) secured claims based upon the Second Mortgage Secured Obligations are classified in a separate class from secured claims based upon the Bank Secured Obligations and are treated under such plan as an impaired secured class, and such plan could not lawfully be confirmed or approved by the court in such Insolvency or Liquidation Proceeding unless the class of secured claims based upon the Second Mortgage Secured Obligations votes, as a class, to accept such plan,

then the holders of secured claims based upon the Second Mortgage Secured Obligations shall not vote such secured claims to accept such plan if: (i) the Bank Agent notifies the holders of such secured claims (in such manner and to such Person at such addresses as the Trustee may direct), at least 10 Business Days before ballots are due in the voting on such plan, that fewer than the holders of two-thirds in amount of secured claims based upon the Bank Secured Obligations will vote, as a separate class (or as if they were a separate class), to accept such plan, (ii) such notice is not withdrawn by the Bank Agent by written notice to the Trustee or the Second Mortgage Holders and (iii) such plan is not accepted by the holders of secured claims based upon the Bank Secured Obligations voting as a separate class (or as if they were a separate class).