

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MASTER CASE NO. 09-2106-MD-GOLD/BANDSTRA

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

MDL NO. 2106

This document relates to Case Numbers:

09-CV-23835-ASG  
10-CV-20236-ASG

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**DECLARATION OF THOMAS C. RICE IN SUPPORT OF DEFENDANTS'  
JOINT MOTIONS TO DISMISS THE TERM LENDER COMPLAINTS**

Thomas C. Rice, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the law firm of Simpson Thacher & Bartlett LLP, counsel for defendants Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., and The Royal Bank of Scotland plc in the above-captioned actions.

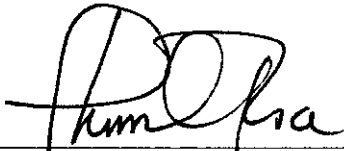
2. I submit this Declaration in support of Defendants' Joint Motions to Dismiss the Term Lender Complaints, and, more particularly, for the limited purpose of bringing before the Court certain documents, the contents of which are "alleged in [the] complaint[s]" and are "central to [the Term Lenders'] claim[s]." *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005).

3. Capitalized terms used below shall have the meanings ascribed thereto in Defendants' Joint Motions to Dismiss the Term Lender Complaints and Supporting Memorandum of Law, which is being filed simultaneously herewith.

4. A copy of the Credit Agreement is annexed hereto as Exhibit A.
5. A copy of the Disbursement Agreement and Exhibits A, C-1, and T thereto is annexed hereto as Exhibit B.
6. A copy of the March 2 Notice of Borrowing is annexed hereto as Exhibit C.
7. A copy of the March 3 Notice of Borrowing is annexed hereto as Exhibit D.
8. A March 4, 2009 Message (without its attachment) posted by Bank of America to the IntraLinks site used by Lenders is annexed hereto as Exhibit E.
9. A copy of the March 9 Notice of Borrowing is annexed hereto as Exhibit F.
10. A copy of the April 20 Termination Letter is annexed hereto as Exhibit G.
11. A copy of the April 21 Notice of Borrowing is annexed hereto as Exhibit H.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 18, 2010

  
\_\_\_\_\_  
Thomas C. Rice

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Declaration of Thomas C. Rice in Support of Defendants' Joint Motions to Dismiss the Term Lender Complaints was furnished via e-mail (where an e-mail address is listed) and First Class U.S. Mail to those on the attached service list on February 18, 2010.

By: /s/ John B. Hutton  
John B. Hutton

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# **Exhibit A**

**Published CUSIP Number: 34460YAA5**

**EXECUTION**

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**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

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**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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TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS.....	1
1.1 Defined Terms.....	1
1.2 Other Definitional Provisions.....	39
1.3 Letter of Credit Amounts.....	40
1.4 Times of Day.....	40
SECTION 2. AMOUNT AND TERMS OF COMMITMENTS.....	41
2.1 Loans and Commitments Generally.....	41
2.2 Amortization and Scheduled Principal Payments.....	42
2.3 Partial Conversion of the Revolving Commitments.....	43
2.4 Procedures for Borrowing; Where Disbursed.....	43
2.5 Swing Line Commitment.....	44
2.6 Procedure for Swing Line Borrowing; Refunding of Swing Line Loans.....	45
2.7 Repayment of Loans; Evidence of Indebtedness.....	46
2.8 Commitment Fees, etc.....	47
2.9 Termination or Reduction of Commitments.....	48
2.10 Optional Prepayments.....	48
2.11 Mandatory Prepayments and Commitment Reductions.....	49
2.12 Conversion and Continuation Options.....	51
2.13 Minimum Amounts and Maximum Number of Eurodollar Tranches.....	52
2.14 Interest Rates and Payment Dates.....	52
2.15 Computation of Interest and Fees.....	53
2.16 Inability to Determine Interest Rate.....	53
2.17 Requirements of Law.....	54
2.18 Taxes.....	56
2.19 Indemnity.....	58
2.20 Illegality.....	59
2.21 Change of Lending Office.....	59
2.22 Loss Proceeds.....	59
2.23 Payments Generally; Administrative Agent's Clawback.....	61
2.24 Sharing of Payments by Lenders.....	64
SECTION 3. LETTERS OF CREDIT.....	65
3.1 The L/C Commitment.....	65
3.2 Procedures for Issuance and Amendment of Letters of Credit.....	66
3.3 Drawings and Reimbursements; Funding of Participations.....	67
3.4 Repayment of Participations.....	69
3.5 Obligations Absolute.....	70
3.6 Role of Issuing Lender.....	70
3.7 Cash Collateral.....	71
3.8 Applicability of ISP and UCP.....	72
3.9 Letter of Credit Fees.....	72
3.10 Fronting Fee and Documentary and Processing Charges Payable to Issuing Lender.....	72

3.11	Conflict with Issuer Documents.....	73
<b>SECTION 4. REPRESENTATIONS AND WARRANTIES.....</b>		
4.1	Financial Condition.....	73
4.2	No Material Adverse Effect.....	74
4.3	Corporate/LLC Existence; Compliance with Law.....	74
4.4	Corporate Power; Authorization; Enforceable Obligations.....	74
4.5	No Legal Bar.....	75
4.6	No Material Litigation.....	75
4.7	No Default.....	75
4.8	Ownership of Property; Liens.....	75
4.9	Intellectual Property.....	76
4.10	Taxes.....	76
4.11	Federal Regulations.....	77
4.12	Labor Matters.....	77
4.13	ERISA.....	77
4.14	Investment Company Act; Other Regulations.....	77
4.15	Subsidiaries.....	77
4.16	Use of Proceeds; Letters of Credit.....	78
4.17	Environmental Matters.....	78
4.18	Accuracy of Information.....	79
4.19	Security Documents.....	80
4.20	Solvency.....	81
4.21	Second Mortgage Notes.....	81
4.22	Regulation H.....	81
4.23	Insurance.....	81
4.24	Performance of Agreements; Material Agreements.....	81
4.25	The Site.....	81
4.26	Permits.....	83
4.27	Utilities.....	83
4.28	Fiscal Year.....	83
4.29	Transactions with Affiliates.....	83
<b>SECTION 5. CONDITIONS PRECEDENT.....</b>		
5.1	Conditions to Closing Date.....	83
5.2	Conditions to Extensions of Credit controlled by Disbursement Agreement.....	84
5.3	Conditions to Extensions of Credit following the Opening Date (except for Reserved Amounts).....	84
<b>SECTION 6. AFFIRMATIVE COVENANTS.....</b>		
6.1	Financial Statements.....	85
6.2	Certificates; Other Information.....	87
6.3	Payment of Obligations.....	89
6.4	Conduct of Business and Maintenance of Existence, etc.....	89
6.5	Maintenance of Property; Leases; Insurance.....	90
6.6	Inspection of Property; Books and Records; Discussions.....	90
6.7	Notices.....	91
6.8	Environmental Laws; Permits.....	92



6.9	Interest Rate Protection.....	93
6.10	Additional Collateral, Discharge of Liens, etc.....	93
6.11	Use of Proceeds and Revenues .....	95
6.12	Compliance with Laws; Permits .....	95
6.13	Further Assurances.....	96
6.14	Condo Unit Sales .....	97
SECTION 7. NEGATIVE COVENANTS .....		98
7.1	Financial Covenants.....	98
7.2	Limitation on Indebtedness.....	99
7.3	Limitation on Liens.....	100
7.4	Limitation on Fundamental Changes .....	103
7.5	Limitation on Disposition of Property .....	103
7.6	Limitation on Restricted Payments and Payments in respect of Subordinated Affiliate Expenses.....	105
7.7	Limitation on Capital Expenditures .....	106
7.8	Limitation on Investments .....	107
7.9	Limitation on Optional Payments and Modifications of Governing Documents .....	108
7.10	Limitation on Transactions with Affiliates .....	108
7.11	Limitation on Sales and Leasebacks .....	109
7.12	Limitation on Changes in Fiscal Periods .....	109
7.13	Limitation on Negative Pledge Clauses.....	109
7.14	Limitation on Restrictions on Subsidiary Distributions, etc.....	110
7.15	Limitation on Lines of Business .....	110
7.16	Restrictions on Changes.....	110
7.17	Limitation on Formation and Acquisition of Subsidiaries and Purchase of Equity Interests .....	111
7.18	Limitation on Hedge Agreements.....	111
7.19	Limitation on Sale or Discount of Receivables .....	111
7.20	Limitation on Zoning and Contract Changes and Compliance.....	111
7.21	No Joint Assessment; Separate Lots .....	111
7.22	Acquisition of Real Property .....	111
7.23	Use of Proceeds.....	112
7.24	Liquidity Account .....	112
SECTION 8. EVENTS OF DEFAULT .....		113
SECTION 9. THE ADMINISTRATIVE AGENT; THE ARRANGERS; THE MANAGERS .....		118
9.1	Appointment and Authority .....	118
9.2	Rights as a Lender.....	119
9.3	Exculpatory Provisions .....	119
9.4	Reliance by Administrative Agent.....	120
9.5	Delegation of Duties .....	120
9.6	Resignation of Administrative Agent .....	120
9.7	Non-Reliance on Administrative Agent and Other Lenders.....	121
9.8	No Other Duties, Etc.....	122

9.9	Administrative Agent May File Proofs of Claim.....	122
9.10	Collateral and Guarantee Matters .....	122
9.11	Withholdings.....	124
SECTION 10. MISCELLANEOUS .....		124
10.1	Amendments and Waivers .....	124
10.2	Notices; Effectiveness; Electronic Communications.....	126
10.3	No Waiver; Cumulative Remedies .....	128
10.4	Survival of Representations and Warranties.....	128
10.5	Expenses; Indemnity; Damage Waiver.....	129
10.6	Successors and Assigns.....	131
10.7	Adjustments; Set-off .....	135
10.8	Counterparts .....	135
10.9	Severability .....	135
10.10	Integration .....	135
10.11	<b>GOVERNING LAW</b> .....	136
10.12	Submission To Jurisdiction; Waivers .....	136
10.13	Certain Matters Affecting Lenders .....	136
10.14	Acknowledgments.....	137
10.15	Treatment of Certain Information; Confidentiality.....	138
10.16	Release of Collateral and Guarantee Obligations .....	138
10.17	Accounting Changes .....	139
10.18	Delivery of Lender Addenda .....	139
10.19	Construction.....	139
10.20	Payments Set Aside.....	140
10.21	Replacement of Lenders .....	140
10.22	<b>WAIVERS OF JURY TRIAL</b> .....	141
10.23	Gaming Authorities.....	141
10.24	USA PATRIOT Act Notice .....	142
10.25	Joint and Several .....	142

SCHEDULES:

1.1	Closing Date Loan Documents
1.2	Unrecorded Leases
4.1	Contingent Obligations, Etc., of Parent and its Subsidiaries as of the Closing Date
4.4	Consents, Authorizations, Filings and Notices
4.6	Litigation
4.9	Intellectual Property
4.19(a)-1	UCC Filing Jurisdictions - Collateral
4.19(a)-2	UCC Financing Statements to Remain on File
4.19(c)	UCC Filing Jurisdictions - Intellectual Property Collateral
4.24	Material Agreements
4.25	Space Leases
4.29	Affiliate Agreements
6.5(d)	Insurance Requirements
6.14	Condo Unit Release Prices
10.2	Administrative Agent's Office, Certain Addresses for Notices

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 33⅓% 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 33⅓% 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(e).

"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(e).

"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.

"Indemnatee" 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 1 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 Jeffery 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 Jeffery Soffer and/or such other Persons referred to in (a).

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

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

"L/C 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.

"L/C Commitment" means \$100,000,000.

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

"L/C 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.

"L/C 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	<u>Lender Excess Cash Flow Percentage</u>
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 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.

"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.

(e) 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:



(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 (e) 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 L/C 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.

(e) 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, Turnberry 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 (e), (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:

<b>Fiscal Quarter</b>	<b>Maximum Total Leverage Ratio</b>
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:

<u>Fiscal Quarter</u>	<u>Maximum First Lien Leverage Ratio</u>
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 though 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:

<u>Fiscal Quarter</u>	<u>Minimum Fixed Charge Coverage Ratio</u>
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;

(e) 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 if 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) Turnberry 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 Turnberry 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(c), 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 (vi) 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