As filed with the Securities and Exchange Commission on June 17, 2002

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

Wynn Resorts, Limited

(Exact name of Registrant as specified in its charter)

Nevada	**7990**	**46-0484987**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
(702) 733-4444
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Ronald J. Kramer
President
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
(702) 733-4444
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public:
As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. **o**

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. **o**

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. **o** _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. **o** _____

If delivery of the prospectus is expected to be made pursuant to Rule 434 under the Securities Act, check the following box. **o**

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Number of Shares to be Registered(1)**	**Proposed Maximum Offering Price Per Share(2)**	**Proposed Maximum Aggregate Offering Price(1)(2)**	**Amount of Registration Fee**
Common stock, par value $0.01 per share			$408,250,000	$37,559

(1) Includes shares of common stock that may be sold pursuant to the underwriters' over-allotment options.
(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to such Section 8(a), may determine.

Subject to Completion, Dated June 17, 2002

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Wynn Resorts, Limited

Shares

Common Stock

This is the initial public offering of Wynn Resorts, Limited. We are offering shares of our common stock. We anticipate that the initial public offering price will be between $ and $ per share. We will apply to list our common stock on The Nasdaq Stock Market's National Market under the symbol "WYNN."

Concurrent with this offering, we expect that our wholly owned subsidiaries, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., will jointly offer $350 million in aggregate principal amount of second mortgage notes.

Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page 8.

None of the Securities and Exchange Commission or any state securities commission, the Nevada State Gaming Control Board, the Nevada Gaming Commission or any state gaming commission or any other gaming regulatory authority has approved or disapproved of these securities, passed on the investment merits of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds, before expenses, to Wynn Resorts, Limited	$	$

We have granted to the underwriters the right to purchase up to additional shares of common stock to cover over-allotments.

Joint Book-Running Managers

Deutsche Bank Securities Bear, Stearns & Co. Inc. Banc of America Securities LLC

Dresdner Kleinwort Wasserstein

The date of this prospectus is 2002.

DESCRIPTION OF ARTWORK

[artist's renderings of main and south porte cochere]

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. We urge you to read this entire prospectus carefully, including the "Risk Factors" section beginning on page 8.

Wynn Resorts, Limited was recently organized as a Nevada corporation in preparation for this offering. Our assets and operations are currently held by and conducted through Valvino Lamore, LLC, a Nevada limited liability company, and its subsidiaries. Before the closing of this offering, all of the members of Valvino Lamore, LLC will contribute their membership interests in Valvino Lamore, LLC to Wynn Resorts, Limited in exchange for shares of the common stock of Wynn Resorts, Limited, and Valvino Lamore, LLC will become a wholly owned subsidiary of Wynn Resorts, Limited.

Unless otherwise indicated, information in this prospectus gives effect to the contribution of membership interests in Valvino Lamore, LLC to Wynn Resorts, Limited in exchange for shares of common stock of Wynn Resorts, Limited. Unless the context otherwise requires, the terms "we," "our" and "us," as used in this prospectus, mean Wynn Resorts, Limited and its consolidated subsidiaries, after giving effect to the contribution of membership interests in Valvino Lamore, LLC to Wynn Resorts, Limited. References to Wynn Resorts mean Wynn Resorts, Limited, excluding any subsidiaries, and references to Valvino mean Valvino Lamore, LLC, excluding any subsidiaries. Certain statements in this prospectus, including in this summary, constitute "forward-looking statements." See "Forward-Looking Statements."

Overview

We are constructing and will own and operate Le Rêve, which we have designed to be the preeminent luxury hotel and destination casino resort in Las Vegas. Le Rêve will be situated on approximately 192 acres at the site of the former Desert Inn Resort & Casino on the Las Vegas Strip in Las Vegas, Nevada. We

expect Le Rêve to cost approximately $2.4 billion to design and construct, including the cost of the land, capitalized interest, pre-opening expenses and all financing fees. We have scheduled ground breaking to occur in September 2002, with an opening to the general public scheduled for March 2005.

Le Rêve is the concept of one of Wynn Resorts' principal stockholders and our Chairman of the Board, Stephen A. Wynn, who was Chairman of the Board, President and Chief Executive Officer of Mirage Resorts, Incorporated and its predecessor from 1973 to 2000. In that role, he was responsible for the development of Bellagio, The Mirage, Treasure Island at The Mirage and the Golden Nugget—Las Vegas in Las Vegas, Nevada, as well as the Atlantic City Golden Nugget in New Jersey and Beau Rivage in Biloxi, Mississippi. We intend for Le Rêve to set a new standard of luxury and elegance for destination casino resorts in Las Vegas.

Wynn Resorts' wholly owned subsidiary, Wynn Design & Development, LLC, together with Mr. Wynn, is designing Le Rêve. Wynn Design & Development will supervise construction of the resort. Many of the people on the Wynn Design & Development team worked with Mr. Wynn at Mirage Resorts to develop Bellagio and have extensive backgrounds in the development, construction and operation of major destination casino resorts.

In addition to our development activities in Las Vegas, the government of the Macau Special Administrative Region of the People's Republic of China has awarded Wynn Resorts (Macau), S.A., a Wynn Resorts majority-owned subsidiary, a provisional concession to negotiate a concession agreement with the Macau government permitting the construction and operation of one or more casinos in Macau. If we can reach an agreement on terms

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satisfactory to us and the Macau government, we will be one of only three companies to have an opportunity to conduct gaming operations in Macau.

Other Financing Transactions

Concurrent with this offering, we expect that Wynn Resorts' wholly owned subsidiaries, Wynn Las Vegas, LLC, which will own and operate Le Rêve, and Wynn Las Vegas Capital Corp., referred to as Wynn Capital, will jointly offer $350 million in aggregate principal amount of second mortgage notes. We intend to use our existing cash and the net proceeds of the contemplated offering of the second mortgage notes, together with the net proceeds of this offering, approximately $747 million of borrowings under a $750 million revolving credit facility and $250 million under a delay draw term loan facility, facilities for which we have, through certain of our subsidiaries obtained commitments, and $150 million under a contemplated furniture, fixtures and equipment, or FF&E, facility, to develop and construct Le Rêve. We sometimes refer to the anticipated revolving credit facility and the anticipated delay draw term loan facility as the credit facilities. Consummation of this offering is conditioned on consummation of the offering of the second mortgage notes and on our entering into the agreements governing our credit facilities and contemplated FF&E facility.

Business and Marketing Strategy

- *Apply the "Wynn Brand" and Experience to Create a "Must-Visit" Destination Casino Resort on the Las Vegas Strip.* We believe that Mr. Wynn is widely viewed as the premier designer, developer and operator of destination casino resorts in Las Vegas. We believe that Le Rêve will represent a natural extension of the concepts Mr. Wynn has utilized in developing other major destination casino resorts. Rather than focusing on a highly themed experience like many other hotel casino resorts on the Las Vegas Strip, Le Rêve will offer richly furnished, spacious guest rooms, fine dining, premier retail shopping, distinctive entertainment and other high-quality non-gaming amenities in a luxurious environment having a sophisticated, casually elegant ambiance. In this manner, we believe that the property, rather than a theme, will be the attraction and, therefore, will have greater lasting appeal to customers.

- *Create the First New Major Hotel Casino Resort on the Las Vegas Strip in Over Four Years.* We believe that, at the time of Le Rêve's planned opening in March 2005, it will have been more than four years since a major new hotel casino resort opened on the Las Vegas Strip. As a result, we expect that there will be a high level of customer anticipation for Le Rêve.

- *Provide an Experience of the Highest Standard of Luxury in an Atmosphere of Casual Elegance.* We will seek to attract a range of customers, including middle market customers and high roller and premium gaming patrons, by providing guests with a premium level of luxury, amenities and service, such as:

    - 2,701 richly furnished, spacious guest rooms and suites;
    - a casually elegant casino, including a distinctive baccarat salon and high-limit private gaming rooms;
    - an intimate environment for our guests with an eight story, manmade "mountain" enclosing an approximately three-acre lake in front of the hotel;
    - 18 dining outlets, including six fine-dining restaurants;
    - an exclusive 18-hole championship golf course on the premises of Le Rêve;

    - a new water-based entertainment production created by Franco Dragone, the creative force behind Bellagio's production of "O" and Treasure Island at The Mirage's production of "Mystère;"
    - our on-site, full-service Ferrari and Maserati dealership; and
    - an art gallery displaying works from the private art collection of Mr. and Mrs. Wynn.

- *Use Le Rêve's Non-Gaming Facilities to Generate Substantial Revenue.* We expect that non-gaming revenue will account for a substantial portion of our overall revenue. We expect the primary sources of this non-gaming revenue to include our hotel rooms, restaurants, golf course, entertainment production, retail shopping, spa and salon, convention and banquet facilities, nightclub, wedding chapels, art gallery and on-site Ferrari and Maserati dealership.

- *Capitalize on the Close Proximity of the Resort to the Las Vegas Convention Center and the Sands Expo and Convention Center.* Le Rêve will be adjacent to the Las Vegas Convention Center and the Sands Expo and Convention Center, two of the largest trade show and convention facilities in the United States. We intend to offer free shuttle service to and from the Las Vegas Convention Center. We expect trade show and convention visitors to be an important source of room demand for Le Rêve.

- *Provide a Basis for Future Growth Through Development.* Our site includes a parcel of approximately 20 acres fronting Las Vegas Boulevard next to the Le Rêve site and an approximately 137-acre plot located behind the hotel on which the new golf course will be built. If, after commencing operations, the 20-acre parcel and the golf course parcel are released from the liens under our credit facilities and the second mortgage notes, those parcels would provide the opportunity to expand our business and the potential for future projects, including a possible second hotel casino as a Phase II development on the 20-acre parcel.

- *Capitalize on Le Rêve's Experienced Management Team.* The members of our management team have extensive experience in developing and operating large scale hotels and casinos. Many of these individuals have worked together in the past to develop and/or operate large hotel casino resorts, including Bellagio, The Mirage and Treasure Island at The Mirage.

- *Carefully Manage Construction Costs and Risks.* Marnell Corrao Associates, Inc., referred to as Marnell Corrao, will be the builder and general contractor for most of Le Rêve, excluding the parking garage and the golf course. Marnell Corrao has extensive experience in building large Las Vegas destination casino resorts, including Bellagio, The Mirage, Treasure Island at The Mirage and New York-New York Hotel and Casino. We expect the total development cost of Le Rêve to be approximately $2.4 billion, including the cost of the land, capitalized interest, pre-opening expenses and all financing fees. Of that amount, we estimate that the design and construction costs will be approximately $1.375 billion. We have entered into a guaranteed maximum price construction contract with Marnell Corrao covering approximately $902 million of the budgeted cost to construct Le Rêve, subject to increases based on, among other items, changes in the scope of the work. We plan to implement specific mechanisms that are intended to mitigate the risk of construction cost overruns and delays, including:

  - a $150 million contractor performance and payment bond;

  - a guaranty by Marnell Corrao's parent company, Austi, Inc., of Marnell Corrao's full performance under the construction contract until final payment under that contract;

  - a $50 million completion guaranty in favor of the lenders under our credit facilities and the holders of the second mortgage notes by a special purpose subsidiary of Wynn Resorts secured by $50 million of the proceeds of this offering;

  - a separate liquidity reserve account holding $30 million of the proceeds of this offering;

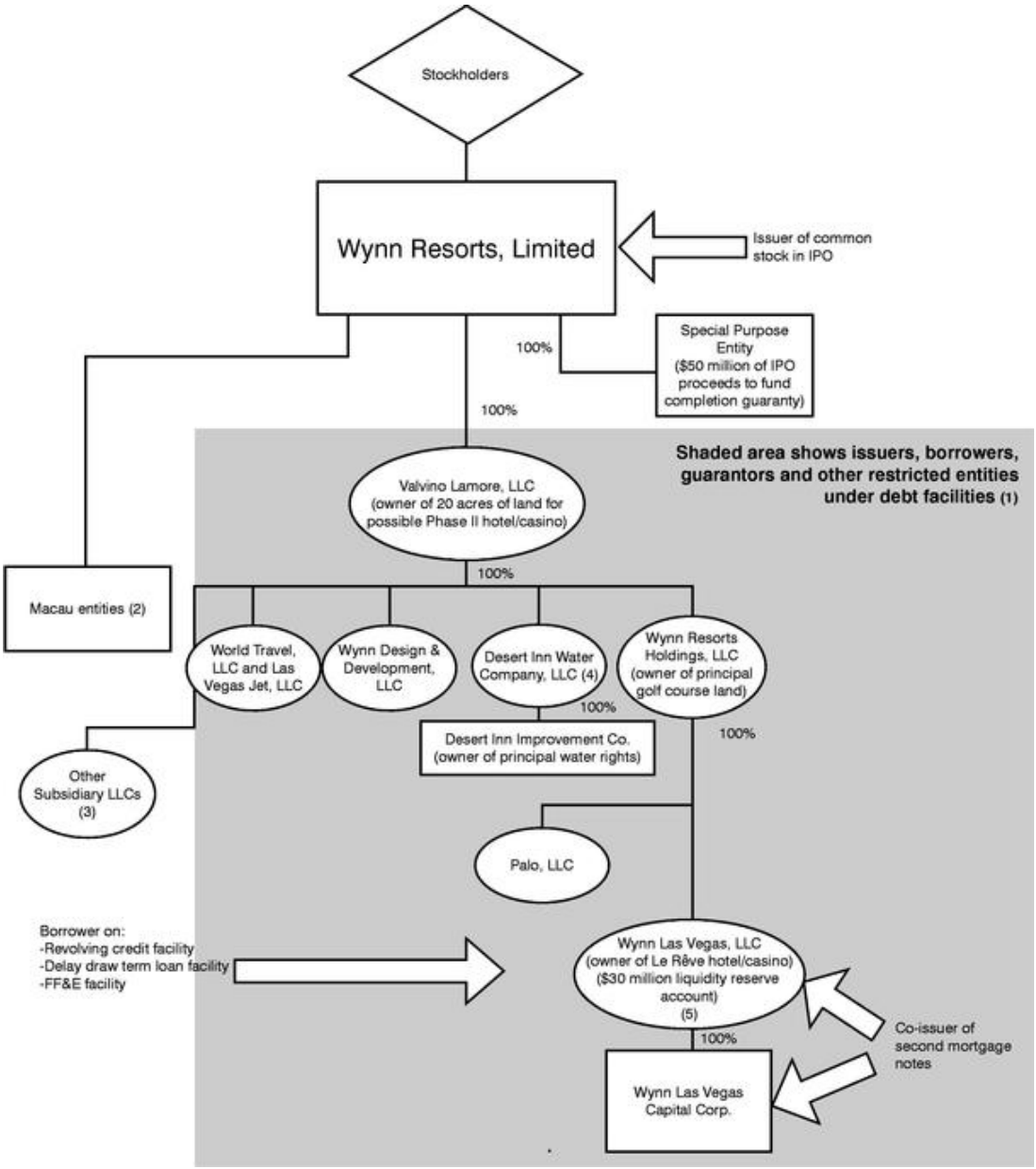
  - budgeted interest and commitment fees on our indebtedness for four months after our scheduled opening date; and

  - an owner's contingency of approximately $32.1 million included in the design and construction budget.

A disbursement agreement will require us to satisfy specified conditions before we may use the proceeds of our credit facilities, the second mortgage notes and certain of the sources described above to fund construction costs.

Corporate Structure

The following chart illustrates the organizational structure of our principal operations as they will stand upon the consummation of this offering, including giving effect to the contribution of the Valvino membership interests to Wynn Resorts. We designed this chart to depict the relationships between our various operations and our ownership interest in them. It does not contain all of our subsidiaries and, in some cases for presentation purposes, we have combined separate entities to indicate operational relationships. We have also indicated which principal entities initially will be borrowers, issuers, guarantors and restricted subsidiaries under the contemplated indenture governing the second mortgage notes and the contemplated credit facilities. All other entities, including Wynn Resorts, will not be guarantors and will not be subject to the covenants in the indenture governing the second mortgage notes and the credit facilities, except that Wynn Resorts will become a guarantor under these debt instruments, but not subject to their covenants, if it incurs, or becomes a guarantor on, other indebtedness.



(1) The shaded area shows the entities which will be issuers, guarantors or other restricted entities with respect to the second mortgage notes and borrowers and guarantors with respect to the revolving credit facility, delay draw term loan facility and the contemplated FF&E facility.

(2) Includes a number of wholly owned and partially owned entities.

(3) Includes a number of wholly owned subsidiary limited liability companies. These entities include Kevyn, LLC, Rambas Marketing Co., LLC, Toasty, LLC, and WorldWide Wynn, LLC.

(4) Desert Inn Water Company, LLC is currently a wholly owned subsidiary of Valvino. Desert Inn Improvement Co. is and will remain a wholly owned subsidiary of Desert Inn Water Company, LLC. Desert Inn Water Company, LLC will become a wholly owned subsidiary of Wynn Resorts Holdings, LLC once approval of the Nevada Public Utilities Commission is obtained. This approval is expected to be separate from and subsequent to the Nevada Public Utilities Commission's approval of this offering. The Nevada Public Utilities Commission may not give its approval.

(5) We will contribute $30 million of the net proceeds of this offering to Wynn Las Vegas, LLC to be held in a liquidity reserve account pledged to the lenders under our credit facilities and second mortgage note holders to secure Wynn Las Vegas' obligation to complete the project. Such funds will be applied to the costs of the project as the lenders under our credit facilities determine in accordance with the disbursement agreement.

Issuer Information

Wynn Resorts, Limited is a Nevada corporation. Before the closing of this offering, all of the members of Valvino Lamore, LLC, a Nevada limited liability company, will contribute their membership interests in Valvino to Wynn Resorts in exchange for shares of the common stock of Wynn Resorts. As a result, Valvino will become a wholly owned subsidiary of Wynn Resorts. Wynn Resorts' principal executive offices are located at 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109. Wynn Resorts' telephone number is (702) 733-4444.

The Offering

Common stock offered by Wynn Resorts	shares
Common stock to be outstanding after this offering	shares
Use of proceeds	We intend to use our existing cash and the net proceeds from this offering, along with the borrowings under our credit facilities and our contemplated FF&E facility and the net proceeds from the expected offering of the second mortgage notes, to develop and construct Le Rêve, a destination casino resort on the Las Vegas Strip which is expected to open in March 2005. As

	described below, $50 million of the proceeds from this offering will be contributed to a special purpose subsidiary and $30 million of the proceeds from this offering will be contributed to Wynn Las Vegas, LLC to be held in a separate account, in each case, pledged to the lenders under our credit facilities and our second mortgage note holders to secure our obligations to complete the project.
Listing	We intend to file an application to have Wynn Resorts' common stock approved for quotation on The Nasdaq Stock Market's National Market under the symbol "WYNN."

Unless otherwise indicated, all share information in this prospectus is based on the number of shares outstanding as of , 2002 and excludes:

- shares of Wynn Resorts' common stock available for future issuance under our stock incentive plan; and
- the possible issuance of up to additional shares of Wynn Resorts' common stock that the underwriters have the option to purchase from Wynn Resorts to cover over-allotments.

One of our subsidiaries, a special purpose subsidiary formed to be bankruptcy-remote, will provide a $50 million completion guaranty to the lenders under our credit facilities and the second mortgage note holders in connection with the construction and opening of Le Rêve. We will contribute $50 million of the net proceeds of this offering to that subsidiary to support its obligations under the completion guaranty. These funds will be deposited into a collateral account to be held in cash or short-term highly-rated securities, and pledged to the lenders under our credit facilities and second mortgage note holders to secure the completion guaranty, to be applied to the costs of the project as the lenders under our credit facilities

determine in accordance with the disbursement agreement. These funds will not be available to us until Le Rêve is completed and is opened, at which time any amounts then remaining in the account will be released to us.

In addition, we will contribute $30 million of the net proceeds of this offering to Wynn Las Vegas to be held in a separate liquidity reserve account pledged to the lenders under our credit facilities and second mortgage note holders to secure Wynn Las Vegas' obligation to complete the project. Until the copletion and opening of Le Rêve, these funds may be applied to the costs of the project as the lenders under our credit facilities determine in accordance with the disbursement agreement. Following the opening of Le Rêve, these funds will be available to meet our working capital needs in connection with the operation of Le Rêve. We will not be able to use the remaining funds for any other purpose until Wynn Las Vegas has met prescribed cash flow tests for a full fiscal year after the opening of Le Rêve.

RISK FACTORS

The value of an investment in Wynn Resorts will be subject to significant risks inherent in our business. You should carefully consider the risks described below, together with all of the other information included in this prospectus, before purchasing Wynn Resorts' common stock. If any of the following risks and uncertainties actually occur, our business, financial condition or operating results could be harmed substantially. This could cause the trading price of Wynn Resorts' common stock to decline, perhaps significantly, and you may lose all or part of your investment in Wynn Resorts' common stock.

Certain statements in "Risk Factors" constitute "forward-looking statements." Actual results could differ substantially from those projected in the forward-looking statements as a result of certain factors and uncertainties set forth below and elsewhere in this prospectus. See "Forward-Looking Statements."

Risks Associated with Our Construction

Although we have, or expect to have prior to the consummation of this offering, commitments in place for the financing of the Le Rêve project, there are significant conditions to the funding of that financing.

Concurrent with the closing of our equity and debt offerings, we will enter into the agreements to govern our credit facilities. We also expect to enter into an agreement for an FF&E facility. However, because we have not yet obtained a commitment for the FF&E facility, the terms and conditions to funding of our anticipated FF&E facility are not yet known. The closings of our equity and debt offerings and our debt facilities will be conditioned on each other occurring.

We intend to deposit all of the net proceeds from the offering of the second mortgage notes in a secured account pledged to the second mortgage note holders pursuant to an agreement with the trustee for the second mortgage note holders.

Our ability to receive disbursements from time to time of the second mortgage note proceeds from the secured account and to borrow under our credit facilities will be, in addition to other customary conditions to funding for these types of facilities, subject to various conditions, including the following:

- there shall be no default under our credit facilities or under the indenture governing our second mortgage notes;
- the lenders under our credit facilities must be satisfied with our senior debt ratings;
- our debt facilities must be "in balance," meaning that the undisbursed portions of the second mortgage note proceeds and our credit facilities, together with certain other funds available to us, must equal or exceed the remaining costs to complete construction plus required contingency;
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construction must be in substantial conformity with the plans and specifications for the project as amended from time to time in accordance with the terms of the disbursement agreement;

- we must certify that the project will be completed by August 31, 2005;
- there shall not have occurred any event that has caused or resulted in or could reasonably be expected to cause or result in a material adverse effect;
- all conditions set forth in the disbursement agreement for the disbursement of funds shall have been satisfied;

- arrangements reasonably satisfactory to the lenders under our credit facilities have been entered into and will be in full force and effect to ensure that a gaming license for the project will be obtainable in the event that one of our major stockholders is unable to qualify for such license;
- we shall have obtained, if available on commercially reasonable terms, taking into account the state of the insurance market at such time and the then current practices of comparable projects, terrorism insurance in size and substance satisfactory to the lenders under our credit facilities; and
- the lenders under our credit facilities must be satisfied with the subcontractor bids received by our general contractor in respect of a specified percentage of the guaranteed maximum price under the construction contract, which percentage is to be mutually agreed upon by us and the lenders under our credit facilities.

We expect that our FF&E facility will contain conditions to funding comparable to those appropriate to that type of facility.

We cannot assure you that we will be able to satisfy the conditions to funding at the time disbursements or drawdowns are required to make payments of our construction costs. Satisfaction of various conditions is subject to the discretion of the lenders under our credit facilities and their consultants and is therefore out of our control.

Under the terms of our disbursement agreement, we will be required to use the proceeds of Wynn Resorts' initial public offering before accessing the proceeds of the second mortgage note offering or borrowing under our credit facilities. We do not expect to request a disbursement of the second mortgage note proceeds from the secured account or to borrow under our credit facilities until approximately ten to twelve months after the closing of this offering. We cannot assure you that we will be able to satisfy the conditions to the release or drawdown of funds at that time or at any other time in the future when the release of the second mortgage note proceeds or drawdown of funds under our credit facilities or contemplated FF&E facility is needed. Our failure to satisfy the conditions to the release of the second mortgage note proceeds or drawdowns under our credit facilities or the contemplated FF&E facility could severely impact our ability to complete Le Rêve. If we fail to obtain the release of the second mortgage note proceeds or the drawdown of funds under our credit facilities or the contemplated FF&E facility, we may not have access to alternative sources of funds necessary to complete Le Rêve on satisfactory terms or not at all. If we are forced to resort to alternative sources of funds, it could impair our competitive position and reduce our future cash flows. Moreover, if we decide to seek additional equity capital as a funding alternative, the interests of Wynn Resorts' stockholders could be diluted.

Our lenders have not yet approved our construction contracts, including the Marnell Corrao guaranteed maximum price construction contract covering approximately $902 million of the project's budgeted costs. The lenders under our credit facilities and our second mortgage note holders may seek to impose conditions on our ability to receive disbursements of the second mortgage note proceeds and to borrow under our credit facilities that are not consistent with our construction contracts, and may require additional negotiation of our construction contracts.

Development costs of Le Rêve are estimates only and actual development costs may be higher than expected.

We expect the total development cost of Le Rêve to be approximately $2.4 billion, including the budgeted design and construction costs, cost of the land, capitalized interest, pre-opening expenses and all financing fees. The required cash interest payments and

commitment fees on our credit facilities, contemplated FF&E facility, second mortgage notes and any other indebtedness and obligations of ours which will become due through the fourth month following the estimated commencement date of operations of Le Rêve have been included in our estimate of the total development cost.

Of the estimated $2.4 billion total development cost for Le Rêve, the design and construction costs are budgeted to be approximately $1.375 billion, including the cost of constructing the new golf course and principal parking garage. The $1.375 billion of budgeted design and construction costs does not include costs such as:

- pre-opening costs,
- entertainment production costs,
- site acquisition costs,
- construction period interest,
- financing fees or
- costs related to various furniture, fixtures and equipment, such as slot machines, computer equipment and kitchen and dining supplies.

While we believe that the overall budget for the development costs for Le Rêve is reasonable, these development costs of Le Rêve are estimates and the actual development costs may be higher than expected. Although we have a $32.1 million contingency to cover cost overruns, such contingency may not be sufficient to cover the full amount of such overruns. Moreover, our lenders may impose conditions on the use of this contingency. If this contingency is not sufficient to cover these costs, we may not have access to the funds required to pay these excess costs. Our inability to pay development costs as they are incurred will negatively affect our ability to complete Le Rêve and thus may significantly impair our business operations and prospects.

Not all of the construction costs of Le Rêve are covered by our guaranteed maximum price construction contract and we will be responsible for any cost overruns of these excluded items.

We have entered into a guaranteed maximum price construction contract with Marnell Corrao covering approximately $902 million of the budgeted $1.375 billion design and construction costs, subject to increases based on, among other items, scope changes, to construct Le Rêve. We are responsible for cost

overruns with respect to approximately $473 million of the $1.375 billion budgeted design and construction cost expenditures that are not part of the guaranteed maximum price contract, such as:

- owner-managed interior design and related furniture, fixtures and equipment, construction of restaurant and retail spaces, including tenant allowances, signage and electronic systems, site work and exterior features at a budgeted cost of approximately $295.4 million;
- construction of the new golf course at a budgeted cost of approximately $21.5 million, excluding the cost of the land; we expect to solicit competitive bids in summer 2002 for construction of the new golf course and to award the construction contract in the third quarter of 2002;
- construction of the principal parking garage at a budgeted cost of approximately $11.5 million;
- estimated design and engineering professional fees of approximately $64.2 million;

- costs of obtaining required governmental approvals and permits and utility service connection fees of approximately $13.4 million;
- costs of miscellaneous capital projects, including demolition and mock-up costs, of approximately $23.6 million;
- utilities and security costs during construction of approximately $6.3 million;
- estimated insurance costs of approximately $12.6 million for builder's risk insurance, fees and reserves under the owner-controlled insurance program, umbrella and excess liability insurance and design professional liability insurance; and
- contingency of approximately $24.5 million of the total owner's contingency of $32.1 million.

Neither the guaranteed maximum price nor the other provisions relating to cost overruns in the construction contract with Marnell Corrao will provide any safeguards against increased costs related to items not covered by that construction contract. While we may in the future enter into other agreements that may seek to limit our exposure to construction cost increases, the actual costs for these items may exceed budgeted costs.

If the cost of the items described above exceeds the $473 million budget for those items, we may need to raise additional funding, which may not be available on satisfactory terms or at all, or we may choose to reduce the scope of the work and design components to reduce the costs of constructing the project.

We may have to provide allowances for improvements to retail tenants in excess of our budgeted amounts.

We expect to lease approximately one-half of the retail shops at Le Rêve to third parties. We intend to provide some of our retail tenants an allowance for improvements as part of the lease arrangements. These construction costs and allowances are included in our design and construction budget for Le Rêve. Design and/or construction costs in excess of an allowance are intended to be the responsibility of the particular retail tenant. Nevertheless, if we are unable to successfully negotiate leases consistent within our design and construction budget, we may have to fund or construct, at our cost, additional improvements in connection with the leases relating to the space.

Not all plans and specifications regarding the design of Le Rêve are finalized.

Although we have determined the overall scope and general design of Le Rêve, not all of the construction components that are the subject of the approximately $902 million guaranteed maximum price contract with Marnell Corrao have been finalized. The remainder of the construction budget covered by the guaranteed maximum price contract is based on master concept plans and agreed upon design and other premises and assumptions for the detailed plans to be created for the remaining components. Construction will commence before completion of all drawings and specifications.

Specifically, as of the date of this prospectus, and with regard to a portion of the construction budget covered by the Marnell Corrao construction contract:

- we have prepared and received bids on final construction drawings and specifications for approximately 3 million square feet of high rise hotel, convention center, central plant, meeting rooms and warehouse space, which represents approximately $349 million of the construction components covered by the construction contract;
- approximately $515.5 million represents components, for which final plans have not yet been completed; and

- approximately $32.1 million of the approximately $515.5 million of construction components consists of allowances for additional items of the construction work that are in the earliest concept stages, such as construction of the "mountain." If the actual cost of these items exceeds the allowances, we will be responsible for these excess amounts.

Due to the lack of final plans for substantial portions of the project, the construction contract does not require Marnell Corrao to adhere to specific cost limits on a line item basis. Rather, it only obligates Marnell Corrao to complete the construction within an overall guaranteed maximum price subject to certain general balancing and other requirements. Therefore, there is a risk that the funds earmarked for the guaranteed maximum price could be exhausted before substantial completion of the project should Marnell Corrao spend greater amounts on certain line items in the earlier stages of construction. In addition, the disbursement agreement and the credit facilities will contain balancing provisions requiring us to demonstrate, as a condition to every release or drawdown of funds, that we have sufficient funds available to cover all remaining construction costs, plus required contingency, in accordance with our construction budget. Accordingly, if Marnell Corrao spends greater amounts than anticipated in respect of any component of the work, we may be denied further access to the proceeds of the second mortgage notes and under our credit facilities.

The guaranteed maximum price under the Marnell Corrao construction contract may increase, and we would be responsible for the amount of any increase.

Increases due to changes in the scope of work and inconsistencies between final plans and premises and assumptions.

The construction contract with Marnell Corrao provides that the guaranteed maximum price will be appropriately increased, and the deadline for completion of construction will be appropriately adjusted, on account of, among other circumstances:

- changes in the design documents prepared by the architect or deficiencies in the design documents;
- changes requested or directed by us in the scope of the work to be performed pursuant to the construction contract;

- changes in legal requirements;
- natural disasters, unavoidable casualties, industry-wide labor disputes affecting the general Las Vegas area and not limited to the project, and other force majeure events that are unforeseeable and beyond the reasonable control of Marnell Corrao; and
- delays caused by us.

We will commence construction of Le Rêve before all plans and specifications will be completed. Delays in completing the remaining drawings and specifications could cause delays in the substantial completion of the work and, under specific circumstances, could defer the contractor's obligation to deliver the completed project by the scheduled completion date.

Inconsistencies between the completed drawings and specifications and the premises and assumptions on which the approximately $902 million guaranteed maximum price was based, could, under specific circumstances, cause us to be responsible for costs in excess of the guaranteed maximum price. For example, if the initial drawings, when finalized, are inconsistent with the premises and assumptions, we will be responsible for the increase, if any, in the cost to construct the work covered by those drawings over the previously agreed upon amounts designated for such work in the guaranteed maximum price. Furthermore, the

premises and assumptions may not be sufficiently specific to determine, as between the contractor and us, who is responsible for cost overruns in specific situations.

Increases due to allowance items and changes in the allocation of interior work.

Approximately $32.1 million of the approximately $902 million guaranteed maximum price consists of allowances for additional items of the construction work that are in the earliest concept stages, and for which we will be responsible for any cost overruns. Drawings for the interior work on the project have not been finalized. If the cost to complete such interior work exceeds the budgeted amount therefor, such excess may not be covered by the quaranteed maximum price and, accordingly, we will be responsible for such excess costs.

The guaranteed maximum price provides for an owner contingency of approximately $7.6 million to cover several items, including owner-created delays and owner-originated changes in the scope of work. We cannot assure you that the amount of the owner-contingency will be sufficient to cover any or all delays or changes in the scope of work. The guaranteed maximum price also reflects a credit of $18 million for the anticipated savings derived from the owner controlled insurance program on contractor and subcontractor insurance costs. While we have tried to anticipate the cost savings, we cannot be certain of the precise savings until the final audit is complete.

Cost overruns could cause us to be out of "balance" under our debt facilities and, consequently, unable to obtain funds from the second mortgage note proceeds secured account or to draw down under our credit facilities. If we cannot obtain these funds, we will not be able to open Le Rêve to the general public on schedule or at all.

When we finalize plans or specifications in the future, we may discover that we need to obtain additional funding, which may not be available on satisfactory terms or at all, or, subject to consent of our debt holders as required under the Disbursement Agreement, we may choose to reduce the scope of work and design components to reduce costs of the work.

The liquidated damages provision in our guaranteed maximum price construction contract may not be sufficient to protect us against exposure to actual damages we may suffer for delay in completion of the project.

Under the construction contract, the guaranteed date of substantial completion is 910 calendar days from the date we direct Marnell Corrao by written notice to commence construction. The contract provides for liquidated damages in the amount of $300,000 per day to be imposed on Marnell Corrao on a daily basis if all work required by the construction contract is not substantially completed by the deadline, following a five-day grace period and subject to force majeure and other permitted extensions. The liquidated damages for delay in the completion of construction are limited to a maximum amount of $9 million. We cannot assure you that construction will be completed on schedule and, if completion of the construction is delayed beyond the grace period, our actual damages may exceed $9 million, or 30 days of delay. Our credit facilities require us to obtain delay liquidated damages insurance to supplement the delay damages payable by Marnell Corrao. We cannot assure you that we will be able to obtain a liquidated damages insurance policy. If we do not obtain this insurance policy, we will not be able to obtain funds from the second mortgage note proceeds secured account or to draw down under our credit facilities. Moreover even we if we are able to obtain liquidated damages insurance, we cannot assure you that we will be able to obtain the insurance proceeds on a timely basis to pay our costs as they are incurred. In addition, if the contractor defaults under the construction contract, we may be unable to complete Le Rêve on schedule or within the amount budgeted. Failure to complete construction on schedule may have a significant negative impact on our operations.

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

Under the terms of the construction contract with Marnell Corrao, Marnell Corrao is, subject to specific conditions and limitations, responsible for all construction costs covered by the construction contract that exceed the approximately $902 million guaranteed maximum price contained in the contract.

As noted above, the contract also provides for liquidated damages in the amount of $300,000 per day to be imposed on the contractor on a daily basis if the work required by the construction contract is not substantially completed by the deadline, following a five-day grace period and subject to force majeure and other permitted extensions. The liquidated damages for delay in the completion of construction are limited to a maximum amount of $9 million.

Austi, the parent company of the contractor, which is a private company controlled by the Anthony A. Marnell II family, has agreed to provide a continuing guaranty by which Austi guarantees Marnell Corrao's full performance under the construction contract until final payment under that contract. In addition, Marnell Corrao is obligated to obtain and provide a $150 million contractor performance and payment bond.

We cannot assure you that Marnell Corrao and Austi will have sufficient financial resources to fund any cost overruns or liquidated damages for which Marnell Corrao is responsible under the guaranteed maximum price contract. Furthermore, neither Marnell Corrao nor Austi is contractually obligated to maintain their financial resources to cover cost overruns. If Marnell Corrao and Austi do not have the resources to meet their obligations and we are unable to obtain funds

under the performance and payment bond in a timely manner, or if the performance and payment bond is insufficient to cover any shortfall, we may need to pay these excess costs in order to complete construction of Le Rêve. This may require us to raise additional funding, which may not be available on satisfactory terms or at all. If we seek additional equity capital as a funding alternative, the interests of Wynn Resorts' stockholders could be diluted.

Certain provisions in our construction contract that we have entered into may be unenforceable.

Recently enacted Nevada statutes have substantially impaired, and in some cases eliminated, an owner's ability to withhold funds from a contractor or subcontractor, even when there may be defective work or a dispute about amounts owed. The new laws also limit an owner's ability to terminate, suspend or interrupt the construction, and in several circumstances, entitle the contractor and subcontractor to payment of their full unearned fee, following a brief notice period, if the owner suspends, terminates or interrupts the construction or fails to make payment or withholds amounts claimed to be due. The construction contract with Marnell Corrao contains provisions that provide us with rights and protections that in some circumstances may be inconsistent with these new laws. While it appears that some of the new laws can be waived, others expressly prohibit waiver. The effect of the new laws on the provisions of the construction contract is not completely clear. Therefore, while we have negotiated with Marnell Corrao for specific rights and obligations, including with respect to damages, termination and suspension of construction, those provisions of the construction contract may not be enforceable to the extent they conflict with non-waivable provisions of applicable laws. If the provisions of the construction contract are not enforceable, delays or suspensions in the work initiated by the owner or other events may

expose us to increased costs. We cannot assure you that we will have sufficient funds to pay these increased costs.

There are significant risks associated with major construction projects that may prevent completion of Le Rêve on budget and on schedule.

Major construction projects of the scope and scale of Le Rêve entail significant risks, including:

- shortages of materials or skilled labor;
- unforeseen engineering, environmental and/or geological problems;
- work stoppages;
- weather interference;
- unanticipated cost increases; and
- unavailability of construction equipment.

Construction, equipment or staffing problems or difficulties in obtaining any of the requisite licenses, permits, allocations and authorizations from regulatory authorities could increase the total cost, delay or prevent the construction or opening or otherwise affect the design and features of Le Rêve.

We anticipate that only some of the subcontractors engaged by the contractor to perform work and/or supply materials in connection with the construction of Le Rêve will post bonds guaranteeing timely completion of a subcontractor's work and payment for all of such subcontractor's labor and materials. We cannot assure you that these bonds will be adequate to ensure completion of the work.

We cannot assure you that Le Rêve will commence operations on schedule or that construction costs for Le Rêve will not exceed budgeted amounts. Failure to complete Le Rêve on budget or on schedule may have a significant negative effect on us.

Risks Related to Our Substantial Indebtedness

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

As we progress toward the completion of the construction of Le Rêve, we will have a substantial amount of consolidated debt in relation to our equity, which debt will increase during the construction period. Concurrent with the closing of this offering, we expect to enter, through our subsidiary Wynn Las Vegas, into two credit facilities, a revolving credit facility in a maximum principal amount of $750 million and a delay draw term loan facility in a maximum principal amount of $250 million. We also expect that Wynn Las Vegas and Wynn Capital will issue an aggregate principal amount of approximately $350 million of second mortgage notes. Through another subsidiary, we have assumed indebtedness of approximately $28.5 million under financing arrangements in connection with our acquisition of World Travel, LLC, the owner of our corporate jet, from Mr. Wynn. We also expect to enter, through our subsidiary Wynn Las Vegas, LLC, into an agreement for an FF&E facility in a maximum principal amount of $150 million. However, because we have not yet obtained a commitment for the FF&E facility, the terms of the anticipated FF&E facility are not yet known. We anticipate that we will draw down approximately $747 million under the revolving credit facility and the full amount of the delay draw term loan facility to fund the construction, development, equipping and opening of Le Rêve and, therefore, by the time Le Rêve is

complete, we expect to have total outstanding indebtedness in an aggregate principal amount of approximately $1.53 billion.

Our substantial indebtedness could have important consequences for you. For example:

- Before Le Rêve opens, which is expected to occur in March 2005, we will have no material operations or earnings and consequently will be dependent on the proceeds of this offering, borrowings under our credit facilities, our anticipated FF&E facility and the proceeds of the second mortgage note offering to meet all of our construction, debt service and other obligations;
- If we are unable to meet conditions to disbursements of the second mortgage note proceeds or to drawing down amounts under our credit facilities or our anticipated FF&E facility, we may not have sufficient funds to continue or complete construction of Le Rêve or to satisfy our construction, debt service and other obligations with respect to our credit facilities, our contemplated FF&E facility, and the second mortgage notes;
- Our ability to satisfy our obligations with respect to our credit facilities, our contemplated FF&E facility and the second mortgage notes may be limited, and, if we fail to meet our payment obligations or breach the financial and restrictive covenants contained in the agreements governing our indebtedness, we may be in default under those agreements. If a default is not cured or waived, we may not be able to obtain additional

borrowings, including borrowings needed to continue or complete construction, and the holders of our indebtedness will have the right to accelerate our indebtedness and exercise other rights and remedies against us;

- If we do not complete construction of Le Rêve by August 31, 2005, we will be in default under our credit facilities, the anticipated FF&E facility, and the indenture governing the second mortgage notes, and our lenders and the second mortgage note holders will have the right to accelerate our indebtedness and exercise other rights and remedies against us;
- Upon commencement of operations, we will generate significant gaming receivables as a result of extending credit to our credit customers. These payments likely will be delayed, which will reduce our cash flow until the payment cycle is established;
- Once we are operating, we will be required to use a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the available cash flow to fund working capital, capital expenditures and other general corporate purposes;
- We may have a limited ability to respond to changing business and economic conditions and to withstand competitive pressures, which may affect our financial condition;
- We may have a limited ability to obtain additional financing, if needed, to fund our design and construction costs, working capital requirements, capital expenditures, debt service, general corporate or other obligations;
- Under our credit facilities and the anticipated FF&E facility, a substantial portion of the interest rates we pay will fluctuate with the current market rates and, accordingly, our interest expense will increase if market interest rates increase; and
- We may be placed at a competitive disadvantage to our competitors who are not as highly leveraged.

We have the right to incur additional indebtedness, which may exacerbate the risks described above.

In addition to the undrawn amounts under the revolving facility, the terms of our credit facilities and our contemplated FF&E facility and the indenture governing the second mortgage notes will permit us or our subsidiaries to incur additional indebtedness, subject to the limitations imposed by the covenants in those documents. If our existing and contemplated levels of indebtedness increase, the related risks will increase correspondingly. Furthermore, although Wynn Resorts will not be a guarantor and will not be subject to the covenants in the second mortgage notes and the credit facilities, it will become a guarantor under, but will not be subject to the covenants of, the second mortgage notes and the credit facilities if it incurs, or becomes a guarantor on, other indebtedness. In addition, if we proceed to develop our opportunity in Macau and build and operate one or more casinos there, our foreign subsidiaries might need to incur additional indebtedness to fund the related development, design and construction costs. We cannot predict the terms and conditions that might apply to that indebtedness.

After Le Rêve opens, we may not generate sufficient cash flow to meet our substantial debt service obligations.

After Le Rêve opens, our ability to make interest payments under our credit facilities, our contemplated FF&E facility, the second mortgage notes and other indebtedness will depend on our ability to generate sufficient cash flow from operations. We cannot assure you that we will begin operations by the scheduled opening date or at all, or that we will be able to generate sufficient cash flow to meet our expenses, including our debt service requirements. Our ability to generate cash flow will depend upon many factors, including:

- our future operating performance;
- the demand for services that we provide;
- general economic conditions and economic conditions affecting Nevada or the casino industry in particular;
- our ability to hire and retain employees at a reasonable cost;
- competition; and
- legislative and regulatory factors affecting our operations and business.

Some of these factors are beyond our control. If we fail to generate sufficient cash flow from future operations to meet our debt service obligations, we may need to refinance all or a portion of our indebtedness or obtain additional financing in order to meet our obligations with respect to our indebtedness. We cannot assure you that we will be able to refinance any of our indebtedness or obtain additional financing on satisfactory terms or at all, particularly because of our anticipated high levels of debt and the debt and lien incurrence restrictions imposed by the agreements governing our debt. See "—Risks Associated with New Operations—Le Rêve has no operating history." If we fail to pay our debt service obligations, we will be in default under our indebtedness and our lenders will have the right to accelerate our indebtedness and exercise other rights and remedies against us.

Our indebtedness will be secured by a substantial portion of our assets.

Subject to applicable laws, including gaming laws, and certain agreed upon exceptions, we expect that our debt facilities will be secured by liens on substantially all of the assets of our subsidiaries that are necessary to develop, construct and operate Le Rêve.

We expect that the contemplated FF&E facility will be secured by specific fixed assets financed by that facility, including gaming equipment and devices such as slot machines. Our subsidiaries' indebtedness with respect to our corporate jet will be secured by the jet.

In the event of a default by us or any of our subsidiaries under the financiang document, or if we or certain of our subsidiaries experience insolvency, liquidation, dissolution or reorganization, the holders of indebtedness under our credit facilities, our contemplated FF&E facility, the indenture governing the second mortgage notes and any other secured debt instruments would be entitled to payment from their collateral security, and holders of the unsecured debt of both us and our subsidiaries, if any, would then be entitled to payment in full from our remaining assets before distributions, if any, were made to Wynn Resorts' stockholders.

Our credit facilities and the indenture governing the second mortgage notes will contain covenants that will restrict our specified affiliates' ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.

The credit facilities and the indenture governing the second mortgage notes will impose operating and financial restrictions on Wynn Resorts Holdings, Wynn Las Vegas and specified affiliates designated as restricted entities under our credit documentation and the indenture governing our second mortgage notes. The restrictions that will be imposed under the credit facilities and/or the indenture will include, among other things, limitations on the restricted entities' ability to:

- incur additional debt;
- create liens or other encumbrances;
- pay dividends or make other restricted payments;
- prepay specified indebtedness;
- make investments, loans or other guarantees;
- sell or otherwise dispose of a portion of our assets;
- enter into transactions with affiliates;
- make acquisitions or merge or consolidate with another entity; and
- pursue other business opportunities.

We anticipate that our contemplated FF&E facility will have a number of customary covenants for that type of facility. In addition, the credit facilities will require the restricted entities to satisfy various financial covenants, including maximum total leverage, minimum fixed charge coverage, minimum earnings before interest, tax, depreciation and amortization and minimum net worth requirements. The restricted entities' ability to comply with these provisions may be affected by general economic conditions, industry conditions, other events beyond our control and delayed completion of Le Rêve. As a result, we cannot assure you that we will be able to comply with these covenants. If the restricted entities fail to comply with a financial covenant or other restriction contained in the credit facilities, the indenture governing the second mortgage notes, the contemplated FF&E facility or any future financing agreements, an event of default could occur. An event of default could result in the acceleration of some or all of our indebtedness and the inability to borrow additional funds under the credit facilities and the contemplated FF&E facility. We would not have, and are not certain that we would be able to obtain, sufficient funds to repay our indebtedness if it is accelerated. These events could occur before or after completion of Le Rêve. If these events occurred before completion of Le Rêve, they would have a substantial negative impact on our ability to complete construction in accordance with our schedule or at all.

Risks Associated with New Operations

Le Rêve has no operating history.

We were formed principally to develop and operate Le Rêve. Le Rêve will be a new development and has no history of operations. Upon beginning operations, we will generate significant gaming receivables as a result of extending credit to our credit customers. These payments likely will be delayed, which will reduce our cash flow until the payment cycle is established. We cannot assure you that we will be able to attract a sufficient number of hotel guests, gaming customers and other visitors to Le Rêve to make its operations profitable, either independently or as a whole.

Le Rêve's operations will be subject to the significant business, economic, regulatory and competitive uncertainties and contingencies frequently encountered by new businesses in competitive environments, many of which are beyond our control. Because we have no operating history, it may be more difficult for us to prepare for and respond to these types of risks and the risks described elsewhere in this prospectus than for a company with an established business and operating cash flow. If we are not able to manage these risks successfully, it could negatively impact our operations.

We intend to lease approximately one-half of the retail space and enter into restaurant management agreements with respect to one or more of the restaurants in Le Rêve. We have, or currently are negotiating, letters of intent with certain well-known national retailers and restaurant operators. These letters of intent may not result in binding agreements between us and any retailers or restaurant operators, as the case may be. Furthermore, we may not be able to obtain the number or quality of retail tenants or restaurant operators for the retail and restaurant portions of Le Rêve that currently are planned. If we do not obtain tenants and operators in sufficient number or of sufficient quality, it could impair the competitive position of Le Rêve and affect our operating performance.

The opening and operation of Le Rêve will be contingent upon the receipt of all regulatory licenses, permits, approvals, registrations, findings of suitability, orders and authorizations from the Nevada gaming and other governmental authorities, including findings of suitability with regard to our direct and indirect principal stockholders. See "—General Risks Associated with Our Business—Le Rêve is subject to extensive state and local regulation, and licensing and gaming authorities have significant control over our operations, which could have a negative effect on our business." The scope of approvals required to open Le Rêve is extensive and failure to obtain or maintain such approvals could prevent or delay the completion or opening of all or part of Le Rêve, or otherwise affect the design and features of Le Rêve and could materially and adversely affect our financial position and results of operations.

We will need to recruit a substantial number of new employees before Le Rêve opens and our employees may seek unionization.

We will need to recruit a substantial number of new employees before Le Rêve opens and our employees may seek union representation. We cannot be certain that we will be able to recruit a sufficient number of qualified employees. Currently, Valvino is a party to five collective bargaining agreements with four different unions, which it assumed in connection with the acquisition of the Desert Inn Resort & Casino. All of these agreements will expire before the scheduled opening of Le Rêve. However, the unions may seek to organize the workers at Le Rêve or claim that the agreements assumed in connection with Valvino's acquisition of the Desert Inn Resort & Casino obligate us to enter into negotiations with one

or more of the unions to represent the workers at Le Rêve. Unionization or pressure to unionize could increase our labor costs.

General Risks Associated with Our Business

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

Casino/Hotel Competition. The casino/hotel industry is highly competitive. Resorts located on or near the Las Vegas Strip compete with other Las Vegas Strip hotels and with other hotel casinos in Las Vegas on the basis of overall atmosphere, range of amenities, level of service, price, location, entertainment, theme and size. Le Rêve also will compete with a large number of other hotels and motels located in and near Las Vegas, as well as other resort destinations. Many of our competitors are subsidiaries or divisions of large public companies and may have greater financial and other resources than us.

According to the Las Vegas Convention and Visitors Authority, there were approximately 94,277 hotel rooms on or around the Las Vegas Strip as of December 31, 2001. Competitors of Le Rêve will include resorts on the Las Vegas Strip, among which are Bally's Las Vegas, Bellagio, Caesars Palace, Harrah's Las Vegas Hotel and Casino, Luxor Hotel and Casino, Mandalay Bay Resort & Casino, MGM Grand Hotel and Casino, The Mirage, Monte Carlo Hotel and Casino, New York-New York Hotel and Casino, Paris Las Vegas, Treasure Island at The Mirage and The Venetian, and resorts off the Las Vegas Strip, such as Las Vegas Hilton and Rio All-Suite Hotel & Casino. The Venetian has begun an expansion anticipated to consist of an approximately 1,000-room hotel tower on top of the resort's existing parking garage and approximately 150,000 square feet of additional meeting and conference space. The Venetian's expansion is expected to be completed by June 2003. In addition, Mandalay Bay Resort & Casino has announced that it will begin construction of a 1,122-room, all-suite tower connected to the current hotel casino resort in September 2002, with an expected opening date of October 2003. Mandalay Bay Resort & Casino also is expected to open a new convention and meeting complex in January 2003, and Caesars Palace is currently constructing an approximately 4,000-seat performing arts "Colosseum," which is scheduled to be completed in the first quarter of 2003.

The construction and expansion of these properties during the time that Le Rêve is being constructed may affect the availability of construction labor and supplies, resulting in increased costs. We cannot assure you that the Las Vegas market will continue to grow or that hotel casino resorts will continue to be popular. A decline or leveling off of the growth or popularity of hotel casino resorts or the appeal of the features offered by Le Rêve would impair our financial condition and future results of operations.

As noted elsewhere in this prospectus, Le Rêve will be different from many other Las Vegas resorts in that it will not focus on a highly themed experience. Instead, Le Rêve will offer an environment having a sophisticated, casually elegant ambiance. Le Rêve's environment may not appeal to customers. In addition, customer preferences and trends can change, often without warning, and we may not be able to predict or respond to changes in customer preferences in time to adapt Le Rêve and the attractions and amenities it offers to address new trends.

Retail Competition. Retail shops in Le Rêve will compete with retail malls in or near Las Vegas, including the Fashion Show Mall, which currently is undergoing a substantial remodeling and expansion, retail stores at Bellagio, The Forum Shops at Caesars Palace, The Grand Canal Shoppes at The Venetian, the Desert Passage at Aladdin Resort & Casino and other retailers in resorts on the Las Vegas Strip, all of which may attract customers away from Le Rêve's retail shops.

Other Competition. Le Rêve will also compete, to some extent, with other hotel/casino facilities in Nevada and in Atlantic City, with riverboat gaming facilities in other states, with hotel/casino facilities elsewhere in the world, with state lotteries and with Internet gaming. In addition, certain states recently have legalized, and others may or are likely to legalize, casino gaming in specific areas. Passage of the Tribal Government Gaming and Economic Self-Sufficiency Act in 1988 has led to rapid increases in Native American gaming operations. Also, in March 2000, California voters approved an amendment to the California Constitution, allowing federally recognized Native American tribes to conduct and operate slot machines, lottery games and banked and percentage card games on Native American land in California and in accordance with federal law. These gambling activities are permitted if (1) the governor of California and a Native American tribe reach an agreement on a compact, (2) the California legislature ratifies the compact and (3) the federal government approves the compact. The governor, the legislature and the federal government have approved many compacts. As a result, casino-style gaming is now legal on many tribal lands in California. The proliferation of Native American gaming in California could have a negative impact on our operations. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization of casino gaming in or near metropolitan areas, such as New York, Los Angeles, San Francisco and Boston, from which we intend to attract customers, could have a substantial negative effect on our business. See "Business—Gaming Market and Competition."

Because we may be entirely dependent upon one property for all of our cash flow, we will be subject to greater risks than a gaming company that is more geographically or otherwise diversified.

If we do not develop the Macau opportunity, we do not expect to have material assets or operations other than Le Rêve for the foreseeable future. As a result, we will be entirely dependent upon Le Rêve for all of our cash flow. Although we own a parcel of approximately 20 acres of land located next to Le Rêve along Las Vegas Boulevard and the Le Rêve golf course land that will be available for future development should they be released from the liens under our credit facilities and second mortgage notes, we currently have no plans to develop these parcels. We will be subject to greater degrees of risk than a gaming company that is more geographically or otherwise diverse. The risks to which we will have a greater degree of exposure include the following:

- local economic and competitive conditions;
- inaccessibility due to inclement weather, road construction or closure of primary access routes;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural and other disasters;
- an increase in the cost of electrical power as a result of, among other things, power shortages in California or other western states with which Nevada shares a single regional power grid;
- a decline in the number of visitors to Las Vegas; and
- a decrease in gaming and non-gaming activities at Le Rêve.

Any of the factors outlined above could negatively affect our ability to generate sufficient cash flow to make payments on the second mortgage notes pursuant to the indenture, on

borrowings under the credit facilities or the contemplated FF&E facility or with respect to our other debt.

Terrorism and the uncertainty of war, as well as other factors affecting discretionary consumer spending, may harm our operating results.

The strength and profitability of our business will depend on consumer demand for hotel casino resorts in general and for the type of luxury amenities Le Rêve will offer. Changes in consumer preferences or discretionary consumer spending could harm our business. The terrorist attacks of September 11, 2001, and ongoing terrorist and war activities in the United States and elsewhere, have had a negative impact on travel and leisure expenditures, including lodging, gaming and tourism. We cannot predict the extent to which the events of September 11 may continue to affect us, directly or indirectly, in the future. An extended period of reduced discretionary spending and/or disruptions or declines in airline travel and business conventions could significantly harm our operations. In particular, because we expect that our business will rely heavily upon high-end credit customers, particularly international customers, factors resulting in a decreased propensity to travel internationally, like the terrorist attacks of September 11, could have a negative impact on our operations.

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

Also, the terrorist attacks of September 11 have substantially affected the availability of insurance coverage for certain types of damages or occurrences. While we have obtained limited insurance coverage with respect to occurrences of terrorist acts and any losses that could result from these acts for the next year, we may not be able to obtain like insurance for later periods. The lack of sufficient insurance for these types of acts could expose us to heavy losses in the event that any damages occur, directly or indirectly, as a result of terrorist attacks and have a significant negative impact on our operations.

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

The opening and operation of Le Rêve will be contingent upon our receipt and maintenance of all regulatory licenses, permits, approvals, registrations, findings of suitability, orders and authorizations. The laws, regulations and ordinances requiring these licenses, permits and other approvals generally relate to the responsibility, financial stability and character of the owners and managers of gaming operations, as well as persons financially interested or involved in gaming operations. The scope of the approvals required to open and operate a facility are extensive. Failure to obtain or maintain the necessary approvals could prevent or delay the completion or opening of all or part of the facility or otherwise affect the design and features of Le Rêve. We do not currently hold any state and local licenses and related approvals necessary to conduct our planned gaming operations and we cannot be certain that we will obtain at all, or on a timely basis, all required approvals and licenses. Failure to obtain or maintain any of the required gaming approvals and licenses could significantly impair our financial position and results of operations.

The Nevada Gaming Commission may, in its discretion, require the holder of any securities we issue, including the common stock sold pursuant to this prospectus, to file

applications, be investigated and be found suitable to own Wynn Resorts' securities if it has reason to believe that the security ownership would be inconsistent with the declared policies of the State of Nevada.

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

Wynn Resorts' articles of incorporation will provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent deemed necessary or advisable by the board of directors, Wynn Resorts may redeem shares of its capital stock or other interests in its securities that are owned or controlled by an unsuitable person or its affiliates. The redemption price will be the amount, if any, required by the gaming authority or, if the gaming authority does not determine the price, the sum deemed reasonable by Wynn Resorts. If Wynn Resorts determines the redemption price, the redemption price will be capped at the closing price of the shares on the principal national securities exchange on which the shares are listed on the trading date on the day before the redemption notice is given. If the shares are not listed on a national securities exchange, the redemption price will be capped at the closing sale price of the shares, or if the closing price is not reported, the mean of the bid and asked prices, as quoted on the Nasdaq stock market or another generally recognized reporting system. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects.

Kazuo Okada is the owner of a controlling interest in Aruze Corp., the parent company of Aruze USA, Inc., referred to as Aruze USA, which, immediately before the closing of this offering, will own 47.431% of Wynn Resorts' common stock. Under Nevada gaming regulations, any beneficial owner of more than 10% of Aruze Corp.'s voting securities must be licensed or found suitable, including Kazuo Okada and his son, Tomohiro Okada. Kazuo Okada is currently licensed by the Nevada Gaming Commission to own the shares of Universal Distributing of Nevada, Inc., referred to as Universal Distributing, a gaming machine manufacturer and distributor. Kazuo Okada and his son previously sought approval from the Nevada Gaming Commission in connection with the proposed transfer of Universal Distributing to Aruze Corp. In connection with this application, the Nevada State Gaming Control Board raised certain concerns, including transactions which were then the subject of a pending tax case in Japan which involved Universal Distributing, Aruze Corp. and other related parties. The pursuit of this proposed transfer of Universal Distributing was deferred pending resolution of the Japanese tax case. The lower court in the Japanese tax case ruled in Aruze Corp.'s favor, but the Japanese tax authority has filed an appeal. It is unclear whether or how these events will affect the Nevada Gaming Commission's consideration of suitability with respect to Aruze USA's ownership of Wynn Resorts' stock.

Aruze Corp. has informed us that there are a number of outstanding issues in the investigation of the proposed transfer of Universal Distributing including issues relating to the transactions involved in the above-described tax proceeding. These issues, if not satisfactorily

resolved, could result in the denial of the application. No formal action of any kind has been taken by the Nevada State Gaming Control Board or the Nevada Gaming Commission in connection with these issues. If either of these bodies was to act adversely with respect to the pending proceeding involving Universal Distributing, that decision could adversely affect an application filed by Aruze USA, Aruze Corp., Kazuo Okada or Tomohiro Okada in respect of Wynn Resorts.

Mr. Wynn, Kazuo Okada, Aruze USA, Aruze Corp. and Wynn Resorts have entered into arrangements which provide that if any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or requested to be withdrawn or is not filed within 90 days after the filing of Wynn Resorts' application, Mr. Wynn may elect to purchase the shares owned by Aruze USA in Wynn Resorts. Mr. Wynn may pay this purchase price with a promissory note. If Mr. Wynn chooses not to exercise his right to purchase the shares, Wynn Resorts has the right to require him to purchase the shares, including with a promissory note. The prior buy-out arrangements under the Valvino operating agreement and under the stockholders agreement between Mr. Wynn, Aruze USA and Baron Asset Fund were terminated upon the effectiveness of the new agreement. See "Certain Relationships and Related Party Transactions—Stockholders Agreement" and "—Buy-Out of Aruze USA Stock."

As described above, if Wynn Resorts, pursuant to its articles of incorporation, or Mr. Wynn, pursuant to the buy-out agreement described above, purchases the shares of Wynn Resorts' stock held by an unsuitable person or its affiliate, including Aruze USA, Wynn Resorts and/or Mr. Wynn may, in lieu of immediate payment of the purchase price, issue a promissory note. However, if the Nevada Gaming Commission were to find the unsuitable person or its affiliate unsuitable to own the voting securities of Wynn Resorts, it could also determine that the person is unsuitable to hold a promissory note for the purchase of such voting securities by Wynn Resorts or Mr. Wynn, and could determine not to approve the issuance of the promissory note to the unsuitable person or its affiliate. In such event, the Nevada Gaming Commission could order the unsuitable person or its affiliate to dispose of its voting securities within a prescribed period of time that may or may not be a sufficient period of time to dispose of the securities in an orderly manner. Depending upon the period of time for disposition required by the Nevada Gaming Commission, this could have a negative effect on the price of the stock of Wynn Resorts. In the event that the unsuitable person or its affiliate is unable or fails to dispose of its voting securities within the prescribed period of time, or if Wynn Resorts fails to pursue all lawful efforts to require the unsuitable person or its affiliate to relinquish its voting securities, including, if necessary, the immediate purchase of the voting securities for cash at fair market value, the Nevada Gaming Commission could determine that Wynn Resorts was unsuitable or could take disciplinary action against Wynn Resorts. Disciplinary action could result in the limitation, conditioning, suspension or revocation of any approvals or gaming licenses held by Wynn Resorts and/or the imposition of a significant monetary fine against Wynn Resorts. Any such disciplinary action could significantly impair our operations.

Our business will rely on high-end, international customers to whom we may extend credit, and we may not be able to collect gaming receivables from our credit players.

We expect that a significant portion of our table game revenue will be attributable to the play of a limited number of international customers. The loss or a reduction in the play of the most significant of these customers could have a substantial negative effect on our future operating results. A downturn in economic conditions in the countries in which these customers reside could cause a reduction in the frequency of visits and revenue generated by these customers.

We will conduct our gaming activities on a credit as well as a cash basis. This credit will be unsecured. Table games players typically will be extended more credit than slot players, and high-stakes players typically will be extended more credit than patrons who tend to wager lower amounts. High-end gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a positive or negative impact on cash flow and earnings in a particular quarter.

In addition, the collectibility of receivables from international customers could be negatively affected by future business or economic trends or by significant events in the countries in which these customers reside. We will extend credit to those customers whose level of play and financial resources warrant, in the opinion of management, an extension of credit.

While gaming debts evidenced by a credit instrument, including what is commonly referred to as a "marker," and judgments on gaming debts are enforceable under the current laws of Nevada, and judgments on gaming debts are enforceable in all states under the Full Faith and Credit Clause of the United States Constitution, other states may determine that direct enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the United States of foreign debtors may be reached to satisfy a judgment, judgments on gaming debts are not binding on the courts of many foreign nations. We cannot assure you that we will be able to collect the full amount of gaming debts owed to us, even in jurisdictions that enforce gaming debts. Our inability to collect gaming debts could have a significant negative impact on our operating results.

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

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

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

We believe that we have remediated all material environmental risks of which we are currently aware at the hotel site and on the existing golf course. However, in connection with constructing the new golf course, which will require significant grading, we may discover unforeseen environmental risks which we will need to incur costs to remediate. In addition, we will incur costs associated with asbestos removal from an existing office building in the event we decide to

develop the 20-acre parcel of land located north of Le Rêve along Las Vegas Boulevard that will be available for future development should it be released from the liens under our credit facilities and the second mortgage notes. We may be required to incur

significant costs to remediate these or other environmental hazards or to mitigate environmental risks.

The loss of management and other key personnel could significantly harm our business.

Our ability to maintain our competitive position is dependent to a large degree on the efforts and skills of our senior management team, including Stephen A. Wynn, the Chairman of the Board and one of the principal stockholders of Wynn Resorts. Although we plan to enter into employment agreements with some of our senior executives, including Stephen A. Wynn, Marc D. Schorr, Kenneth R. Wynn, John Strzemp, DeRuyter O. Butler and Marc H. Rubinstein, we cannot guarantee that these individuals will remain with us. If we lose the services of any members of our management team or other key personnel, or if they are unable to devote sufficient attention to our operations, our business may be significantly impaired. We cannot assure you that we will be able to retain our existing senior management personnel or to attract additional qualified senior management personnel. See "Management."

In addition, our officers, directors and certain key employees also will be required to file applications with the Nevada gaming authorities and may be required to be licensed or found suitable by the Nevada gaming authorities. If the Nevada gaming authorities were to find an officer, director or key employee unsuitable for licensing or unsuitable to continue having a relationship with us, we would have to sever all relationships with that person. Furthermore, the Nevada Gaming Commission may require us to terminate the employment of any person who refuses to file appropriate applications. Either result could significantly impair our gaming operations.

Until construction of Le Rêve is close to completion, we do not believe that we will require extensive operational management. Accordingly, we have kept and intend to keep our permanent staff at relatively low levels. We will be required to undertake a major recruiting and training program before Le Rêve opens. While we believe that we will be able to attract and retain a sufficient number of qualified individuals to operate Le Rêve on acceptable terms, the pool of experienced gaming and other personnel is limited and competition to recruit and retain gaming and other personnel is likely to intensify as more hotel casinos are opened. We cannot assure you that these employees will be available to us.

We will be subject to regulatory control by the Public Utilities Commission of Nevada.

Desert Inn Improvement Co., a subsidiary of Wynn Resorts and its subsidiary, Desert Inn Water Company, provides water service to the existing office building on the site of the former Desert Inn Resort & Casino and the remaining homes around the Desert Inn golf course. As a result, Desert Inn Improvement Co. is a public utility under Nevada law. The public utility status of Desert Inn Improvement Co. will impose regulatory restrictions on us. For example, if we decide to make changes to our ownership structure, such as in a merger or acquisition transaction or a significant stock issuance, or a sale of Aruze USA's shares of Wynn Resorts' common stock in the event that Aruze USA is found to be unsuitable to own such stock, we will likely be required to obtain the prior approval of the Public Utilities Commission of Nevada. We will also be required to obtain the prior approval of the Public Utilities Commission of Nevada to transfer ownership of Desert Inn Water Company to Wynn Resorts Holdings. We cannot assure you that these regulatory requirements will not delay or prevent us from entering into transactions or operating our business in a manner that might be beneficial to our stockholders.

The golf course land may be subject to restrictions which could prevent us from constructing the new golf course in accordance with our current plans and may inhibit future development of that land.

We intend to construct the new golf course on a 137-acre parcel of land located behind the hotel. Valvino acquired a portion of this parcel in connection with our purchase of the Desert Inn Resort & Casino and acquired the remainder when it purchased the residential lots located in the interior of, and some, but not all, of the lots around the former Desert Inn golf course. The residential lots, previously known as the Desert Inn Country Club Estates, were subject to various conditions, covenants and restrictions recorded against the lots in 1956 and amended from time to time since then. We believe that these conditions, covenants and restrictions were terminated in accordance with Nevada law in June 2001. However, some of the remaining homeowners have brought a lawsuit against Valvino challenging, among other things, the termination of the covenants, conditions and restrictions. If the plaintiffs prevail on their claims and the conditions, covenants and restrictions remain in effect, we may have to adjust our current plans for the construction of the golf course by redesigning some of the holes located on the periphery of the course.

In addition, at least two of the homeowners have alleged the existence of an equitable implied restriction prohibiting any alternative commercial development of the golf course. If the plaintiffs prevail on this claim, any future development of the golf course parcel for an alternative use may be restricted. Valvino is vigorously contesting the homeowners' claims and will continue to do so. See "Business—Legal Proceedings."

Risks Associated with our Macau Opportunity

We may not be able to construct and operate casinos in Macau.

Currently, we are negotiating a concession agreement with the Macau government that would permit us to construct and operate one or more casinos in Macau. This opportunity is highly contingent because, among other things, we must first:

- reach an agreement with the Macau government on the terms of the concession;
- acquire the rights to use suitable parcels of land in satisfactory locations in Macau on which to build casinos;
- be found suitable in terms of background, business experience, associations and reputation;

- obtain all required licenses; and
- attract qualified management, key personnel and employees to operate the casinos.

Moreover, we would need to obtain the necessary financing to fund the development, design and construction of any casino or casinos in Macau. We contemplate that this financing would involve incurring indebtedness or offering equity in our foreign subsidiaries. We cannot assure you that we would be able to obtain this financing on acceptable terms or at all. As a result of these factors, you should not rely on the potential opportunity to build one or more casinos in Macau in deciding to purchase our securities.

If we build and operate one or more casinos in Macau, we will be subject to considerable risks, including risks related to Macau's untested regulatory scheme.

If we are able and decide to open one or more casinos in Macau, our operations will be subject to unique risks, including risks related to Macau's untested regulatory scheme. In light of the untested regulatory regime, we may need to develop new operating procedures which

are different from those used in domestic casinos. Failure to adapt to the regulatory and gaming environment in Macau could result in the revocation of our concession or other required licenses or otherwise negatively affect our operations there. Moreover, we would be subject to the risk that Macau's gaming regulatory regime will not develop in a way that would permit us, as a United States' gaming operator, to conduct our operations there in a manner consistent with the way in which we intend, or the Nevada gaming authorities require us, to conduct our operations in the United States.

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

If we enter into a concession agreement with the Macau government and construct and operate one or more casinos in Macau, our foreign operations will be subject to significant political, economic and social risks inherent in doing business in an emerging market such as China. For example, fiscal decline and civil, domestic or international unrest in Macau, China or the surrounding regions could significantly harm our business there, not only by reducing customer demand for a casino resort of the kind we would operate in Macau, but also by increasing the risk of imposition of taxes and exchange controls or other governmental restrictions that may impede our ability to repatriate funds. Some of the other risks involved in operating a business in Macau include:

- the possible taking of our property without payment of fair compensation;
- restrictions on foreign partnerships and alliances, foreign ownership and/or possible discrimination against foreign-owned business;
- delayed implementation of effective controls on criminal organizations;
- potential conflicts between local and national governments;
- diversion of management's attention away from business concerns; and
- risks associated with obtaining project financing.

Any potential investment in Macau could be jeopardized by future developments, and we cannot assure you that activities we may plan in Macau will be permitted or feasible.

The Macau government has agreed to grant concessions to operate casinos to three companies. One of the three concessions has been awarded to Sociedade de Jogos de Macau, referred to as SJM, the company owned by Mr. Stanley Ho. Mr. Ho previously held a monopoly franchise through another entity to conduct the only gaming operations in Macau. SJM will have the benefit of being the established gaming enterprise already in existence at eleven locations. Galaxy Casino Co. Ltd., which has entered into a management agreement with the operators of The Venetian in Las Vegas, has been awarded a provisional concession to negotiate an agreement for another concession to operate casinos in Macau. As a result, our foreign gaming business would compete with businesses operated by the two other casino licensees in Macau described above. In addition, the Macau government may award additional concessions in the future. In this event, we will face increased competition.

Due to Macau's location on the South China Sea, our gaming facilities there would be subject to risks related to extreme weather conditions. Macau's subtropical climate is known

for severe weather conditions such as typhoons and heavy rainstorms. Unfavorable weather conditions could negatively affect the profitability of our casino resorts by disrupting our ability to timely construct our casino projects and by preventing guests from traveling to Macau.

Our potential investment in Macau would be made through a number of domestic and foreign majority-owned entities. Although we believe that transfers to these entities of the assets and stock of Wynn Resorts (Macau), S.A., can be accomplished on a tax-free basis, there is a risk that the Internal Revenue Service could assert that any appreciation in the transferred assets or its stock is currently taxable.

Finally, we are subject to regulations imposed by the Foreign Corrupt Practices Act, or the FCPA, which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or keeping business. Any determination that we have violated the

FCPA could have a material adverse effect on us.

If we are granted a concession to build and operate one or more casinos in Macau, certain Nevada gaming laws would apply to our planned gaming activities and associations in Macau.

Certain Nevada gaming laws also apply to gaming activities and associations in jurisdictions outside the State of Nevada. If we develop our opportunity in Macau, we will be required to comply with certain reporting requirements concerning our proposed gaming activities and associations occurring in Macau. We also will be subject to disciplinary action by the Nevada Gaming Commission if we:

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

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

If we are able and decide to build one or more casinos in Macau, the value of our investment will vary depending on changes in the currency exchange rate between the U.S. dollar and foreign currencies, including the Macau pataca.

If we are able and decide to build one or more casinos in Macau, the value of our investment will partially depend on the currency exchange rate between the U.S. dollar and local currencies of countries in the region, including Macau's local currency, the pataca. Accordingly, we may experience economic loss and a negative impact on our earnings with respect to our holdings in Macau solely as a result of foreign currency exchange rate fluctuations, which could include foreign currency devaluations against the dollar. Although Macau does not currently restrict the removal or conversion of foreign or local currency, we cannot assure you that this policy will continue.

Risks Related to the Offering

The price of our common stock after this offering may be lower than the offering price you pay and may be volatile.

Before this offering, our common stock has not been sold in a public market. After this offering, an active trading market in our common stock might not develop. If an active trading market develops, it may not continue. Moreover, if an active market develops, the trading price of our common stock may fluctuate widely as a result of a number of factors, many of which are outside of our control. In addition, the stock market has experienced extreme price and volume fluctuations that have affected the market prices of many companies. These broad market fluctuations could negatively affect the market price of our common stock. A significant decline in our stock price could result in substantial losses for individual stockholders and could lead to costly and disruptive securities litigation. If you purchase shares of our common stock in this offering, you will pay a price that was not established in a competitive market. Rather, you will pay a price that was negotiated with the representatives of the underwriters based upon a number of factors. The price of our common stock that will prevail in the market after this offering may be higher or lower than the offering price.

Substantial amounts of our common stock could be sold in the near future, which could depress our stock price.

Before this offering, there has been no public market for our common stock. We cannot predict the effect, if any, that market sales of shares of common stock or the availability of shares of common stock for sale will have on the market price of our common stock prevailing from time to time. In addition, if Wynn Resorts is required by the Nevada gaming regulators to purchase securities owned or controlled by an unsuitable person or its affiliate, including Aruze USA, we may fund this purchase by the resale of all or some of these securities in a secondary offering. Immediately following the completion of this offering, Aruze USA will hold % of our issued and outstanding common stock. A sale of all or some of Aruze USA's shares in a secondary offering could significantly reduce the market price of the common stock.

All of the outstanding shares of common stock belonging to officers, directors and other stockholders are currently "restricted securities" under the Securities Act. Up to shares are eligible for future sale in the public market at prescribed times pursuant to Rule 144 under the Securities Act, or otherwise. Sales of a significant number of these shares of common stock in the public market could reduce the market price of our common stock.

Wynn Resorts has never paid dividends, does not intend to pay dividends in the foreseeable future and may not pay dividends to any unsuitable person or its affiliates.

Wynn Resorts has never paid dividends and does not anticipate paying any cash dividends on our common stock in the foreseeable future. We intend to retain our earnings, if any, to use in our growth and ongoing operations. In addition, Wynn Resorts is a holding company and, as a result, its ability to pay dividends is dependent on its subsidiaries' ability to provide funds to it. However, the terms of our credit facilities, our contemplated FF&E facility and the indenture governing the second mortgage notes will restrict Wynn Resorts' subsidiaries' ability to provide funds to it for the payment of dividends. See "Description of Certain Indebtedness." Our board of directors has the authority to issue one or more series of preferred stock without action of the stockholders. The issuance of preferred stock could have the effect of limiting dividends on the common stock. Wynn Resorts' articles of incorporation also will prohibit the payment of dividends to anyone who is an unsuitable person or any affiliate of an unsuitable person. See "Description of Capital Stock—Preferred Stock and Prohibitions on the Receipt of Dividends, the Exercise of Voting or Other Rights or the Receipt of Other Remuneration."

The officers, directors and substantial stockholders of Wynn Resorts may be able to exert significant control over its future direction.

After this offering, Mr. Wynn, Wynn Resorts' Chairman of the Board, and Aruze USA will own approximately % and %, respectively, of Wynn Resorts' outstanding common stock. As a result, Mr. Wynn and Aruze USA, to the extent they vote their shares in a similar manner, effectively will be able to control all matters requiring Wynn Resorts' stockholders' approval, including the approval of significant corporate transactions.

In addition, Mr. Wynn and Aruze USA, together with Baron Asset Fund, have entered into a stockholders agreement. Under the stockholders agreement, Mr. Wynn and Aruze USA have agreed to vote their shares of Wynn Resorts' common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which two will be independent directors, and the remaining members of which will be designated by Aruze USA.

As a result of this voting arrangement, Mr. Wynn may, as a practical matter, control Wynn Resorts' board of directors. The stockholders agreement will continue to be in effect after the completion of this offering. The concentration of ownership and representation on Wynn Resorts' board of directors may delay, prevent or deter a change in control, could deprive Wynn Resorts' stockholders of an opportunity to receive a premium for their common stock as part of a sale of Wynn Resorts or its assets and might reduce the market price of Wynn Resorts' common stock. For more information about the stockholders agreement between Mr. Wynn, Aruze USA and Baron Asset Fund, see "Certain Relationships and Related Party Transactions—Stockholders Agreement."

Investors will incur immediate and substantial dilution in the book value of their investment.

We expect the initial public offering price to be substantially higher than the net tangible book value per share of the outstanding common stock. If you purchase shares of our common stock, you will incur immediate and substantial dilution in the amount of $ per share, based on an assumed initial public offering price of $ per share, which is the mid-point of the initial public offering price range set forth on the cover of this prospectus. This means that if we were to be liquidated immediately after the offering, there may be no assets available for distribution to you after satisfaction of all of our obligations to creditors.

Our anti-takeover provisions or provisions of Nevada law could prevent or delay a change in control of Wynn Resorts, even if a change of control would benefit our stockholders.

Provisions of our articles of incorporation and bylaws, as they will be in effect at the completion of this offering, as well as provisions of Nevada law, could discourage, delay or prevent a merger, acquisition or other change in control of Wynn Resorts, even if a change in control would benefit our stockholders. These provisions will:

- classify our board of directors so that only one-third of the directors are elected each year;
- authorize our board of directors to issue "blank check" preferred stock to increase the number of outstanding shares and thwart a takeover attempt;
- eliminate the ability of holders of our common stock to call special meetings of stockholders;
- prohibit stockholder action by written consent and require that all stockholder actions be taken at a meeting of our stockholders;
- establish advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings;
- require a super-majority stockholders' vote to approve mergers, conversions or share exchanges or sales of all or substantially all of our assets; and
- require a super-majority directors' approval of the sale of all or substantially all of our assets.

In addition, the Nevada Revised Statutes contain provisions governing the acquisition of a controlling interest in certain publicly held Nevada corporations. These laws provide generally that any person that acquires 20% or more of the outstanding voting shares of certain publicly held Nevada corporations, which we expect will include Wynn Resorts, in the secondary public or private market must follow certain formalities before such acquisition or they may be denied voting rights, unless a majority of the disinterested stockholders of the corporation elects to restore such voting rights in whole or in part. These laws provide that a person acquires a "controlling interest" whenever a person acquires shares of a subject corporation that, but for the application of these provisions of the Nevada Revised Statutes, would enable that person to exercise (1) one-fifth or more, but less than one-third, (2) one-third or more, but less than a majority or (3) a majority or more, of all of the voting power of the corporation in the election of directors. See "Description of Capital Stock—Nevada Anti-Takeover Law and Certain Charter and Bylaw Provisions—Nevada Control Share Laws."

After we become a registered company under Nevada's gaming laws, we must obtain approval of the Nevada Gaming Commission with respect to changes in control. A person that seeks to acquire control of a registered company must satisfy the Nevada gaming authorities before assuming control of a registered company. The Nevada gaming authorities may also require controlling stockholders, officers, directors and other persons having a material relationship or involvement with a person proposing to acquire control to be investigated and licensed as part of the approval process relating to the transaction. See "Regulation and Licensing—Approval of Changes in Control."

Nevada law also provides that directors may resist a change or potential change in control if the directors determine that the change is opposed to, or not in the best interest of,

the corporation. See "Description of Capital Stock—Redemption of Securities Owned or Controlled by an Unsuitable Person or an Affiliate."

We may redeem your shares due to regulatory considerations, either as required by gaming authorities or in our discretion.

Our articles of incorporation grants us the power to redeem our securities or the securities of our affiliated companies from a person who owns or controls these securities if:

- that person is determined by a governmental gaming authority to be unsuitable to own or control these securities; or
- in the sole discretion of our board of directors, that person is deemed likely to jeopardize our right to conduct gaming activities in any of the jurisdictions in which we conduct gaming activities.

Under the foregoing circumstances, we may redeem, and if required by the applicable gaming authority, must redeem, that person's securities to the extent required by the gaming authority or deemed necessary or advisable by us. The redemption price will be determined by the gaming authority or otherwise will be a price deemed reasonable by us, which in our discretion could be the original purchase price of the securities. However, unless the gaming authority requires otherwise, the redemption price will in no event exceed the closing trading price of the securities on the date of the redemption notice. Furthermore, we will pay the redemption price in cash, by promissory note, or both, as required by the gaming authority or otherwise as we elect.

FORWARD-LOOKING STATEMENTS

Some of the statements under "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and elsewhere in this prospectus constitute forward-looking statements. These statements involve risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or other comparable terminology.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. If one or more of the assumptions underlying our forward-looking statements proves incorrect, then actual results, levels of activity, performance or achievements could differ significantly from those expressed in, or implied by, the forward-looking statements contained in this prospectus. Therefore, we caution you not to place undue reliance on our forward-looking statements. Moreover, neither we nor any other person assume responsibility for the accuracy and completeness of these statements. Except as required by law, we do not intend to update or revise any of the forward-looking statements after the date of this prospectus to conform these statements to actual results. All forward-looking statements attributable to us are expressly qualified by these cautionary statements. Our forward-looking statements in this prospectus include, but are not limited to, statements relating to:

- statements relating to our business strategy;
- statements relating to our development, construction and operation of Le Rêve;
- expectations concerning future operations, margins, profitability, liquidity and capital resources; and
- our current and future plans, including the opportunity to develop one or more casinos in Macau.

These forward-looking statements are subject to risks, uncertainties, and assumptions about us and our operations that are subject to change based on various important factors, some of which are beyond our control. The following factors, among others, could cause our financial performance to differ significantly from the goals, plans, objectives, intentions and expectations expressed in our forward-looking statements:

- risks associated with entering into a new venture and new construction, including our ability to construct and open Le Rêve on time and on budget;
- competition and other planned construction in Las Vegas;
- uncertainty of casino spending and vacationing in hotel casino resorts in Las Vegas;
- occupancy rates and average room rates in Las Vegas;
- demand for high-end, entertainment-related hotel and destination casino resorts and changing resort preferences among high-end customers;
- domestic and global economic, credit and capital market conditions;
- leverage and debt service obligations, including sensitivity to fluctuations in interest rates;

- our dependence on existing management;

- applications for licenses and approvals under applicable laws and regulations, including gaming laws and regulations;
- changes in gaming laws or regulations, including the legalization or expansion of gaming in certain jurisdictions;
- changes in federal or state tax laws or the administration of these laws;
- regulatory or judicial proceedings; and
- the consequences of any future security alerts and/or terrorist attacks such as the attacks that occurred on September 11, 2001.

USE OF PROCEEDS

We expect to receive approximately $ million in net proceeds from the sale of shares of our common stock in this offering based on the sale of million shares at an assumed initial public offering price of $ per share, the mid-point of the initial public offering price range set forth on the cover of this prospectus. If the underwriters exercise their over-allotment option in full, we expect our net proceeds to be approximately $ million.

Concurrent with this offering, we expect that our wholly owned subsidiaries, Wynn Las Vegas and Wynn Capital, will jointly offer $350 million in aggregate principal amount of second mortgage notes. We expect to receive approximately $ million in net proceeds from the issuance of the second mortgage notes.

We expect to receive an aggregate of approximately $ million from both offerings, without giving effect to the exercise of any over-allotment options.

We intend to use our existing cash and the net proceeds from the common stock and second mortgage note offerings, together with the borrowings under a $750 million revolving credit facility and $250 million delay draw term loan facility, for which we have obtained commitments to develop, construct, furnish and open Le Rêve, which is scheduled to open in March 2005. We also expect to enter into an agreement for a $150 million FF&E facility. However, because we have not yet obtained a commitment for the FF&E facility, the terms of the anticipated FF&E facility are not yet known. We expect that the funds provided by these sources and available cash will be sufficient to develop, design, construct and commence operations of Le Rêve and to pay interest on borrowings under our credit facilities, our contemplated FF&E facility and the second mortgage notes until the scheduled opening of Le Rêve, assuming there are no significant delay costs or construction cost overruns for which we are responsible. See "Risk Factors—Risks Associated with Our Construction," "Risk Factors—Risks Related to Our Substantial Indebtedness," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the accompanying notes.

If the underwriters exercise their over-allotment option, any additional net proceeds to us will be used to provide additional liquidity for our construction and debt service expenses and for our working capital needs, as well as to fund our Macau project if we are able to capitalize on that opportunity. Pending application of the net proceeds as described above, we intend to invest the net proceeds in short-term highly-rated securities.

One of our subsidiaries, a special purpose subsidiary formed to be bankruptcy-remote, will be providing a $50 million completion guaranty in connection with the construction and opening of Le Rêve. We will contribute $50 million of the net proceeds of this offering to that subsidiary to support its obligations under the completion guaranty. These funds will be deposited into a collateral account to be held in cash or short-term highly-rated securities, and pledged to the lenders under our credit facilities and second mortgage note holders to secure the completion guaranty, to be applied to the costs of the project, as the lenders under our credit facilities determine in accordance with the disbursement agreement. These funds will not be available to us until Le Rêve is completed and opens, at which time any amounts then remaining in the account will be released to us.

In addition, we will contribute $30 million of the net proceeds of this offering to Wynn Las Vegas to be held in a separate liquidity reserve account and pledged to the lenders under our credit facilities and second mortgage note holders to secure Wynn Las Vegas' obligation to complete the project. Until the opening of Le Rêve, these funds may be applied to the costs of Le Rêve, as the lenders under our credit facilities determine in accordance with the

disbursement agreement. Following the opening of Le Rêve, these funds will be available to meet our working capital needs in connection with the operation of Le Rêve. Any remaining funds will not be released to us for any other purposes until we have met prescribed cash flow tests for a full fiscal year after the opening of Le Rêve.

The estimated sources and uses of funds to design, construct, develop, equip and open Le Rêve and for our other operations are as follows (1):

Sources (in millions)		Uses (in millions)	
Revolving credit facility (2) (3)	$ 747.0	Construction costs:	
Delay draw term loan facility (2)	250.0	Marnell Corrao contract (9)	$ 901.9
FF&E facility (4)	150.0	Interior design, related FF&E, signage and electronic systems	295.4
Second mortgage notes	350.0	Design and engineering fees	64.2
Other long-term debt (5)	28.5	Golf course construction	21.5
Equity contributions (6)	941.1	Parking garage	11.5
Interest Income (7)	27.9	Government approvals & permits	13.4
Other Income (8)	4.4	Insurance (10)	12.6

		Miscellaneous capital projects	23.6	
		Course of construction utilities & security	6.3	
		Remaining contingency (11)	24.6	
		Total construction costs		$ 1,375.0
		Land and buildings (12)		318.5
		Capitalized interest and commitment fees (3)		251.1
		Pre-opening costs		139.8
		Owner-acquired FF&E (13)		121.2
		Transaction fees and expenses:		
		Debt issuance fees	48.1	
		Equity issuance fees	24.9	
		Total transaction fees and expenses		73.0
		Construction completion guarantee		50.0
		Aircraft acquisition (14)		38.0
		Working capital needs at opening (15)		35.5
		Liquidity maintenance reserve		30.0
		Entertainment production costs (16)		24.0
		Investment in Macau (17)		23.3
		Various other expenditures (18)		11.1
		Pre-opening principal and interest payments on aircraft		8.4
Total Sources	$ 2,498.9	Total Uses		$ 2,498.9

(1) We believe that the construction budget for Le Rêve is reasonable. However, given the risks inherent in the construction process, it is possible that design, construction, development, equipping and opening costs for Le Rêve could be significantly higher. See "Risk Factors—Risks Associated with Our Construction." This sources and uses table assumes that the financing transactions, including this offering, close on September 30, 2002. The budget for Le Rêve includes interest and commitment fees on our debt facilities for four months after our scheduled opening date.

(2) We have entered into a commitment letter with Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC for the provision of a $750 million revolving credit facility and a $250 million delay draw term loan facility. We expect these facilities to close concurrently with the closing of this offering. However, the availability of these funds is subject to negotiation and execution of definitive agreements. The revolving credit facility matures six years from the closing date and the delay draw term loan will be repayable in quarterly installments in amounts to be determined from the opening of Le Rêve until the seventh anniversary of the closing.

We may draw funds on a revolving basis under the revolving credit facilities over a six year period from the closing for the purpose of financing the development and construction of Le Rêve, to pay related fees and expenses and, following completion of Le Rêve, for general corporate purposes of Wynn Las Vegas and its restricted subsidiaries. Under the delay draw term loan, we may draw funds under one or more term loans no more frequently than once per month for two years after the closing for the purpose of financing the development and construction of Le Rêve, including pre-opening costs and related fees and expenses. Term loans, once repaid, may not be reborrowed.

We anticipate that we will begin to draw down funds under these facilities, subject to satisfaction of the conditions in the disbursement agreement, approximately 16-19 months after the closing. We anticipate that we will draw down approximately $747 million under the revolving credit facility to fund construction, development, equipping and opening of Le Rêve. At such time as the total extensions of credit under the revolving credit facility equal or exceed $200 million, two of the three lead agents under that facility will have the right to convert between $100 million and $400 million of the outstanding revolving loans into term loans on the same terms and conditions as the term loans under the delay draw term loan facility or on such other terms as we and the administrative agent and the syndication agent can agree.

(3) This table assumes that our senior secured indebtedness will initially have a rating lower than BB- and Ba3 by Standard & Poor's Rating Group and Moody's Investors Service, Inc., respectively. If both initial ratings are equal to or higher than these ratings, then the interest rates and commitment fees would decrease such that the capitalized interest and commitment fees shown above would decrease by approximately $10.8 million, and there would be a corresponding decrease in the revolving credit facility draw downs to fund such payments. Capitalized interest for our credit facilities and FF&E facility has been computed based on current market projections of the LIBOR rate ranging from 2% to 4%, plus the applicable margin.

This table also assumes that the final construction cost payments are made four months after the opening of Le Rêve to cover capitalized interest and commitment fees that will continue to accrue for four months after the anticipated opening.

(4) We are seeking commitments from lenders to provide a $150 million FF&E facility. As such, the availability of these funds is subject to negotiation and execution of definitive agreements once we reach an agreement in principle with an FF&E lender.

(5) Consists of a loan from Bank of America, N.A. to our subsidiary, World Travel, LLC, secured by a Bombardier Global Express aircraft. Valvino acquired World Travel from Mr. Wynn and has guaranteed this loan. The loan calls for 47 monthly principal payments of $158,333 commencing March 1, 2003 and the payment of the approximately $21.1 million remaining principal on March 1, 2007. See "Certain Relationships and Related Party Transactions—Aircraft Arrangements."

(6) Equity contributions include Valvino member net contributions of approximately $586.1 million, after giving effect to the contribution of $1.2 million in cash to Valvino by the Kenneth R. Wynn Family Trust in exchange for membership interests in Valvino, and anticipated gross proceeds from this offering of $355 million. It also includes the conversion into equity of approximately $2.3 million in accrued interest on loans made to Valvino by Mr. Wynn.

(7) Represents interest earned at the estimated LIBOR rate on our estimated cash balance through the period four months following the scheduled opening of the project. Estimates of the LIBOR rate are based on current market projections of the LIBOR rate ranging from 2% to 4%. Interest income shown is the gross amount of our projected interest income, and is not reduced for any projected taxes. Depending on the extent to which our expenses must be capitalized into the construction project rather than deducted currently, we may owe corporate income tax on our interest income. In addition, because of the large percentage of our outstanding stock that will be owned directly or indirectly by a small number of individuals, our interest income may also be subject to federal personal holding company taxes during the period before Le Rêve commences operations.

(8) Consists of net income from incidental operations, including operation of the golf course through March 31, 2002 and the collection of accounts receivable following the acquisition of the previous facility at the site.

(9) Represents the guaranteed maximum price of construction of Le Rêve under the construction contract, which in turn provides for adjustments to this number under some circumstances. This amount includes an owner's contingency amount of approximately $7.6 million. The construction contract contains financial incentives for Marnell Corrao to complete Le Rêve before the deadline set forth in the construction contract, as well as liquidated damages payable to us for certain unexcused delays. See "Business—Construction Contracts—Construction of the Hotel/Casino—Early or Late Completion." The guaranteed maximum price under the construction contract is subject to adjustment under various circumstances which could increase our costs. See "Risk Factors—Risks Associated with Our Construction."

(10) Represents estimated insurance costs for builder's risk insurance, fees and reserves under the owner-controlled insurance program, umbrella and excess liability insurance and design professional liability insurance.

(11) Represents the owner-contingency with respect to the portions of the project not covered by the construction contract.

(12)

Represents amounts already spent to acquire land (including the golf course land), buildings and water rights.

(13) Represents amounts to be spent by us in acquiring, among other things, slot machines, other gaming equipment, computers, plates, glassware, linen and other kitchen and hotel supplies.

(14) Represents the purchase price of our corporate aircraft, of which approximately $9.5 million was paid in cash at the outset and the balance was represented by a loan from Bank of America, N.A. See footnote (5) above.

(15) Represents the operating cash needed to open Le Rêve, including purchasing the initial retail inventory and food and beverage inventory.

(16) Represents the cost of creating, designing and producing the Franco Dragone water show.

(17) Represents expenditures in connection with negotiation of the Macau concession agreement, including a capital contribution required by Macau law of approximately $22.5 million.

(18) Consists primarily of operating costs of the previous facility at the site before closure of that facility and facility closure expenditures.

DIVIDEND POLICY

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings to fund the design, construction and opening of Le Rêve and to otherwise fund the development and growth of our business and, therefore, we do not anticipate paying any cash dividends on our shares of common stock in the foreseeable future. In addition, we expect that our credit facilities, our contemplated FF&E facility and the indenture governing the second mortgage notes will place limitations on our ability to pay dividends or make other distributions in respect of our common stock. Our future dividend policy will also depend on the requirements of any future financing agreements to which we may be a party and other factors considered relevant by our board of directors, including the provisions of the Nevada Revised Statutes which govern corporations. The Nevada Revised Statutes generally provide that distributions may not be made if after any distribution we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus any amounts needed to satisfy the preferential rights of stockholders if we were dissolved at the time of the distribution. Our board of directors has the authority to issue one or more series of preferred stock without actions of the stockholders. The issuance of preferred stock could have the effect of limiting dividends on the common stock. Upon the consummation of this offering, Wynn Resorts' articles of incorporation will also prohibit the payment of dividends to anyone who is an unsuitable person or any affiliate of an unsuitable person. See "Description of Capital Stock—Preferred Stock, and Prohibitions on the Receipt of Dividends, the Exercise of Voting or Other Rights or the Receipt of Other Remuneration."

CAPITALIZATION

The following table sets forth Wynn Resorts' capitalization as of March 31, 2002:

- on an actual basis;
- on an as adjusted basis to give effect on the closing date of this offering to the sale of shares of Wynn Resorts' common stock in this offering at an assumed initial public offering price of $ per share, which is the mid-point of the initial public offering price range set forth on the cover of this prospectus, the expected concurrent sale of $350 million in aggregate principal amount of the second mortgage notes and the intended application of the net proceeds of both offerings; and
- on an as adjusted basis once all of the funding under the revolving credit facility, the delay draw term loan, the second mortgage note offering and the contemplated FF&E facility necessary for the construction of Le Rêve has occurred. We have assumed that approximately $747 million of the $750 million revolving credit facility will be drawn for the construction of Le Rêve.

You should read this table in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the accompanying notes.

	As of March 31, 2002 (in millions)		
	Actual	As Adjusted for the Common Stock and Second Mortgage Note Offerings	As Adjusted to Reflect All Borrowings Necessary to Construct Le Rêve
Long-Term Debt:			
Revolving credit facility(1)(2)	—	—	$ 747.0
Delay draw term loan facility(1)	—	—	250.0
FF&E facility(3)	—	—	150.0
Second mortgage notes	—	$ 350.0	350.0
Other long-term debt(3)	$ 0.3	0.3	0.3
Total Long-Term Debt	0.3	350.3	1,497.3
Stockholders' Equity	381.9	712.0	885.5(4)
Total Capitalization	$ 382.2	$ 1,062.3	$ 2,382.8

(1) We have entered into a commitment letter with Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC for the provision of a $750 million revolving credit facility and a $250 million delay draw term loan facility. We expect these facilities to close concurrently with the closing of this offering. However, the availability of these funds is subject to negotiation and execution of definitive agreements, the progress of construction and other customary conditions for facilities of this kind. The revolving credit facility matures six years from the closing date and the delay draw term loan will be repayable in quarterly installments in amounts to be determined from the opening of Le Rêve until the seventh anniversary of the closing.

We may draw funds on a revolving basis under the revolving credit facilities over a six year period from the closing for the purpose of financing the development and construction of Le Rêve, to pay related fees and expenses and, following completion of Le Rêve, for general corporate purposes of Wynn Las Vegas and its restricted subsidiaries. Under the delay draw term loan, we may draw funds under one or more term loans no more frequently than once per month for two years after the closing for the purpose of financing the development and construction of Le Rêve, including pre-opening costs and related fees and expenses. Term loans, once repaid, may not be reborrowed.

We anticipate that we will begin to draw down funds under these facilities, subject to satisfaction of the conditions in the disbursement agreement, approximately 16-19 months after the closing of this offering. We

anticipate that we will draw down approximately $747 million under the revolving credit facility to fund construction, development, equipping and opening of Le Rêve. At such time as the total extensions of credit under the revolving credit facility equal or exceed $200 million, two of the three lead agents under that facility will have the right to convert between $100 million and $400 million of the outstanding revolving loans into term loans on the same terms and conditions as the term loans under the delay draw term loan facility or on such other terms as we, the administrative agent and syndication agent can agree.

(2) This table assumes that the indebtedness under our credit facilities will initially have a rating lower than BB- and Ba3 by Standard & Poor's Rating Group and Moody's Investors Service, Inc., respectively. If both initial ratings are equal to or higher than these ratings, then the interest rates and commitment fees would decrease and there would be a corresponding decrease of approximately $10.8 million in the revolving credit facility draw downs to fund such payments.

(3) We are seeking commitments from lenders to provide a $150 million FF&E facility. As such, the availability of these funds is subject to negotiation and execution of definitive agreements once we reach an agreement in principle with an FF&E lender. Because we have not yet obtained a commitment for the anticipated FF&E facility, the terms of the FF&E facility are not yet known. Other long-term debt also does not include a $28.5 million loan incurred by World Travel for the acquisition of a Bombardier Global Express aircraft. Valvino assumed this loan in May 2002 when it acquired World Travel. See "Certain Relationships and Related Party Transactions—Aircraft Arrangements."

(4) Includes cash capital contributions made in April 2002 by Mr. Wynn, Aruze USA and Baron Asset Fund totaling approximately $172.3 million and a cash contribution expected to be made before the closing of this offering by the Kenneth R. Wynn Family Trust of approximately $1.2 million.

DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the pro forma net tangible book value per share of common stock upon completion of this offering.

The net tangible book value of our common stock on , 2002 was $ million, or approximately $ per share. Net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the number of shares of common stock outstanding. Dilution in net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of our common stock in this offering and the net tangible book value per share of our common stock immediately afterwards. After giving effect to the sale of shares in this offering at an assumed initial public offering price of $ per share, which is the mid-point of the initial public offering price range set forth on the cover of this prospectus, and after deducting estimated underwriting discounts and commissions and offering expenses payable by us, our net tangible book value at , 2002 would have been approximately $ million, or $ per share. This represents an immediate increase in net tangible book value of $ per share to existing stockholders and an immediate dilution in net tangible book value of $ per share to new investors purchasing shares of common stock in this offering. The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		$
Net tangible book value per share at , 2002	$	
Increase per share attributable to this offering	$	
Pro forma net tangible book value per share after this offering		$
Dilution in pro forma net tangible book value per share to new investors		$

The following table summarizes, on a pro forma adjusted basis, as of , 2002, the total number of shares of Wynn Resorts' common stock, the total consideration paid and the average price per share paid by existing stockholders and by the new investors in this offering, calculated before deducting the estimated underwriting discounts and commissions and offering expenses:

	(in millions)				
	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders			$ 652.9(1)		
New investors					
Total					

(1) Includes the contribution by Mr. Wynn in April 2002 of his interest in Wynn Resorts (Macau), S.A., which was valued at approximately $56 million by the parties in the negotiation of the contribution of Mr. Wynn's interest. See "Principal Stockholders and History of Wynn Resorts, Limited—History of Wynn Resorts."

The preceding discussion and tables assume no exercise by the underwriters of their over-allotment option. shares are reserved for issuance under our stock incentive plan. To the extent the over-allotment option is exercised, or any shares under the stock incentive plan are issued, there may be further dilution to new investors.

Principal Stockholders

Stephen A. Wynn. From 1973 until 2000, Mr. Wynn served as the Chairman of the Board, President and Chief Executive Officer of Mirage Resorts and its predecessor. Mr. Wynn has more than thirty years of experience in the gaming, hotel and tourism industries as a designer, developer and operator of hotel casino resorts. During his tenure, he led the design and development of the following five hotel casino resorts properties at a construction cost of more than $4.1 billion: Bellagio, The Mirage, Treasure Island at The Mirage, Atlantic City Golden Nugget and Beau Rivage in Biloxi, Mississippi. Mr. Wynn also worked to redesign and expand several other hotel casino resort properties, such as the Golden Nugget—Las Vegas and the Golden Nugget—Laughlin. The public filings and press releases of Mirage Resorts and MGM Mirage report that in fiscal year 1999, the last full year of Mr. Wynn's tenure with Mirage Resorts, the company had grown to own and operate eight hotel casino resort properties totaling 630,000 square feet of casino gaming space and 16,577 hotel rooms that generated approximately $2.4 billion in revenue, $573 million in earnings before depreciation, interest, taxes and pre-opening costs and $110.4 million in net income.

The hotel casino resorts created by Mirage Resorts during Mr. Wynn's tenure are each marked by unique features. In 1989, Mr. Wynn oversaw the creation of the first mega-resort in Las Vegas with the introduction of The Mirage. The Mirage is based on a South Seas theme and features a fifty-four foot "active" volcano, a dolphin habitat and an illusionist show performed by Siegfried and Roy. The Caribbean-inspired Treasure Island at The Mirage, built in 1993, features a pirate village with full-scale replicas of a pirate ship and British frigate, which engage in a special effects battle. Bellagio, a European-style luxury resort completed in 1998, is marked by its eight-acre lake of dancing fountains inspired by Lake Como of Northern Italy, as well as the show "O" produced and performed by the Cirque du Soleil organization.

Under Mr. Wynn, Mirage Resorts was ranked as the second most admired company in the United States in the March 3, 1997 issue of *Fortune* magazine. In that issue, *Fortune* magazine also ranked Mirage Resorts as the fourth best company in the United States in quality of management. During Mr. Wynn's tenure, Mirage Resorts was successful in attracting and retaining top quality employees; Mirage Resorts grew to approximately 30,000 employees by 2000. In 2000, Mirage Resorts was sold to MGM Grand, Inc. for approximately $6.4 billion.

Aruze USA. Aruze USA, a Nevada corporation, is a wholly owned subsidiary of Aruze Corp., a Japanese manufacturer of pachislot and pachinko machines and video game software. As of June 13, 2002, Aruze Corp. had a market capitalization of approximately ¥256 billion, or approximately $2 billion. Kazuo Okada, who founded Aruze Corp. in 1969, now holds a controlling interest in Aruze Corp. and serves as its president. Aruze Corp. is a Japanese corporation traded on the JASDAQ system (NASDAQ Japan). After beginning his career in the juke box and pachinko machine businesses, Mr. Okada continued his business pursuits in the gaming machine manufacturing industry and is credited with creating the pachislot machine. Unlike a typical slot machine, where the reels stop on their own after the player pulls the machine's "arm" to start the rotation of the reels, a pachislot machine player stops each individual reel by pushing a button in front of that reel. The pachislot machine has grown to be very popular in Japan. To date, Aruze Corp. has sold more than 1 million pachislot machine units. Aruze Corp. is now the largest manufacturer of pachislot machines in Japan and holds a significant share of Japan's pachislot machine market in terms of annual sales.

Baron Asset Fund. Baron Asset Fund, a Massachusetts business trust, is comprised of four fund series, each of which is a publicly traded registered mutual fund managed by

BAMCO, Inc., a New York corporation. Together, these fund series hold total assets equal to almost $5 billion. Baron Asset Fund holds shares of Wynn Resorts on behalf of two of the fund series: the Baron Asset Fund Series and the Baron Growth Fund Series. Ron Baron is the Chairman and Chief Executive Officer of Baron Asset Fund and BAMCO.

History of Wynn Resorts

On April 21, 2000, Mr. Wynn organized Valvino Lamore, LLC, a Nevada limited liability company, referred to as Valvino. Initially, Mr. Wynn was the sole member of Valvino. On June 23, 2000, Valvino acquired the former Desert Inn Resort & Casino in Las Vegas, Nevada from Starwood Hotels & Resorts Worldwide, Inc., including the Desert Inn Resort & Casino golf course and some, but not all, of the residential lots located in the interior of and around the former Desert Inn golf course, for approximately $270 million in cash. In connection with that transaction, Valvino and its subsidiaries also acquired approximately 985 acre-feet of certificated water rights to be used for the golf course and the Le Rêve lake. In addition to acquiring the assets of the Desert Inn Resort & Casino, Valvino assumed all of its liabilities and, to the extent assignable, all of its contracts. Valvino later acquired all of the remaining lots located in the interior of, and some of the remaining lots around, the former Desert Inn golf course for a total of $47.8 million, bringing the size of the parcel to approximately 212 acres. On August 28, 2000, Valvino closed the hotel and casino at the Desert Inn Resort & Casino site, and has since been engaged primarily in the development of a new resort hotel and casino on the site. Between April of 2000 and September of 2000, Mr. Wynn made equity contributions to Valvino in an aggregate amount of approximately $220.7 million.

On June 15, 2000, Mr. Wynn loaned Valvino $100 million at an interest rate of 7.875% per year. Pursuant to the Amended and Restated Operating Agreement, dated October 3, 2000, $70 million of this loan was repaid on October 10, 2000 out of the proceeds of Aruze USA's initial capital contribution to Valvino. The remaining approximately $32.3 million balance of this loan, including accrued interest, was converted to equity as a member contribution. On July 11, 2000, Valvino used proceeds from a $125 million loan agreement it entered into with Deutsche Bank Securities Inc., as Lead Arranger, and Bankers Trust Company, as Administrative Agent, to make an approximately $110.5 million equity distribution to Mr. Wynn. The Deutsche Bank loan was repaid in full on October 10, 2000 with proceeds of Aruze USA's initial capital contribution to Valvino.

On October 3, 2000, Aruze USA, a Nevada corporation, contributed $260 million in cash ($250 million net of finders fee) to Valvino in exchange for 50% of the membership interests in Valvino and was admitted as a member of Valvino. Mr. Wynn was designated as, and remains, the managing member of Valvino.

On April 16, 2001, Baron Asset Fund, a Massachusetts business trust, contributed $20.8 million in cash ($20 million net of fees) to Valvino in exchange for approximately 3.70% of the membership interests in Valvino and was admitted as a member of Valvino. Immediately following the admission of Baron Asset Fund, Mr. Wynn and Aruze USA each owned approximately 48.15% of the membership interests in Valvino.

In April 2002, Mr. Wynn, Aruze USA and Baron Asset Fund each made the following further capital contributions to Valvino:

- Mr. Wynn contributed approximately $32 million in cash plus his interest in Wynn Resorts (Macau), S.A., which holds a provisional concession to negotiate with the government of Macau a concession agreement permitting the construction and operation of one or more casinos in Macau. Mr. Wynn did not have an obligation to contribute his interest in Wynn Resorts (Macau), S.A., to Valvino. This interest was valued at approximately $56 million by the parties in the negotiation of Mr. Wynn's

contribution of his interest, after reimbursement to Mr. Wynn of approximately $825,000 advanced by him to Wynn Resorts (Macau), S.A., in connection with the negotiation of the concession agreement and other development activities in Macau. Minority partners currently hold approximately 10% of the ownership interest in Wynn Resorts (Macau), S.A., and, ultimately, are expected to hold approximately 20% of such ownership interest;

- Aruze USA contributed an additional $120 million in cash; and
- Baron Asset Fund contributed an additional approximately $20.3 million in cash.

Immediately following those additional capital contributions, Mr. Wynn and Aruze USA each owned 47.5% of the membership interests in Valvino, and Baron Asset Fund owned 5% of the membership interests in Valvino. The percentage of membership interests held by Baron Asset Fund are held by it on behalf of two series of Baron Asset Fund: (1) the Baron Asset Fund Series, on whose behalf approximately 3.65% of the membership interests in Valvino are held, and (2) the Baron Growth Fund Series, on whose behalf approximately 1.35% of the membership interests in Valvino are held.

On June 10, 2002, Mr. Kenneth R. Wynn entered into an agreement to contribute $1.2 million in cash to Valvino in exchange for 0.146% of the outstanding membership interests in Valvino. We expect that Mr. Kenneth R. Wynn will make this contribution before the consummation of this offering. Unless otherwise indicated, the information in this prospectus gives effect to such contribution.

On June 3, 2002, and in preparation for this offering, Wynn Resorts was incorporated in Nevada, and before the consummation of this offering, all of the members of Valvino will contribute their membership interests in Valvino to Wynn Resorts in exchange for the number of shares of Wynn Resorts set forth below. Percentage ownership is based on shares of common stock outstanding as of , 2002, after giving effect to the acquisition by Mr. Kenneth R. Wynn of membership interests in Valvino and the contribution of all membership interests in Valvino to Wynn Resorts, but before giving effect to the shares being issued in Wynn Resorts' initial public offering.

	Beneficial Ownership of Common Stock	
Name	**Shares**	**Percent**
Stephen A. Wynn		47.431%
Aruze USA, Inc.		47.431%
Baron Asset Fund		4.992%
Kenneth R. Wynn Family Trust		0.146%
Total		100.00%

Upon the completion of the offering, we intend to grant awards of shares of restricted stock under our 2002 stock incentive plan to each of the following employees: DeRuyter O. Butler, William Todd Nisbet, Marc D. Schorr, John Strzemp, Roger P. Thomas and Kenneth R. Wynn. We also intend to grant an award of shares of restricted stock outside of the 2002 stock incentive plan to Mr. Franco Dragone, the creator of our new entertainment production. The restricted stock will be subject to our repurchase right, which will lapse in November 2004 as to Mr. Strzemp, in June 2005 as to Mr. Schorr and Mr. Kenneth R. Wynn, in June 2006 as to Mr. Butler, Mr. Thomas and Mr. Dragone and in July 2006 as to Mr. Nisbet.

After this offering, Mr. Wynn, Wynn Resorts' Chairman of the Board, and Aruze USA will own approximately % and %, respectively, of Wynn Resorts' outstanding common stock.

As a result, Mr. Wynn and Aruze USA, to the extent they vote their shares in a similar manner, effectively will be able to control, as a practical matter, all matters requiring Wynn Resorts' stockholders' approval, including the approval of significant corporate transactions.

Stockholders Agreement. Mr. Wynn and Aruze USA, together with Baron Asset Fund, have entered into a stockholders agreement. The stockholders agreement establishes various rights among Mr. Wynn, Aruze USA and Baron Asset Fund with respect to the ownership and management of Wynn Resorts. These rights include, but are not limited to, certain tag-along rights, preemptive rights, rights of first refusal and certain other restrictions on the transfer of the shares of Wynn Resorts' common stock owned by the parties to the stockholders agreement. In addition, under the stockholders agreement, Mr. Wynn and Aruze USA have agreed to vote their shares of Wynn Resorts' common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which two will be independent directors, and the remaining members of which will be designated by Aruze USA. As a result of this voting arrangement, Mr. Wynn may control Wynn Resorts' board of directors. The stockholders agreement will continue to be in effect after the completion of this offering.

Buy-Out of Aruze USA Stock. Mr. Wynn, Kazuo Okada, Aruze USA, Aruze Corp. and Wynn Resorts have entered into arrangements which provide that if any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or requested to be withdrawn or is not filed within 90 days after the filing of Wynn Resorts' application, Mr. Wynn may elect to purchase the shares owned by Aruze USA in Wynn Resorts. Mr. Wynn may pay this purchase price with a promissory note. If Mr. Wynn chooses not to exercise his right to purchase the shares, Wynn Resorts has the right to require him to purchase the shares, including with a promissory note. The prior buy-out arrangements under the Valvino operating agreement and under the stockholders agreement between Mr. Wynn, Aruze USA and Baron Asset Fund were terminated upon the effectiveness of the new agreement. See "Certain Relationships and Related Party Transactions—Stockholders Agreement" and "Buy-Out of Aruze USA Stock."

SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data regarding Valvino and its subsidiaries should be read together with our consolidated financial statements and notes thereto, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the other information contained in this prospectus. The selected data presented below as of December 31, 2001 and 2000, and for the year ended December 31, 2001 and the period from inception (April 21, 2000) to December 31, 2000, is derived from the consolidated financial statements of Valvino and its subsidiaries, which have been audited by Deloitte & Touche LLP, independent auditors. The consolidated financial statements as of December 31, 2001 and 2000 and the year ended December 31, 2001 and the period from inception to December 31, 2000, and the independent auditors' report thereon, are included elsewhere in this prospectus. The selected data presented below as of March 31, 2002 and for the three months ended March 31, 2002 and 2001, respectively, and the period from inception to March 31, 2002, is derived from the unaudited consolidated financial statements of Valvino and its subsidiaries, which are included elsewhere in this prospectus.

	Three Months Ended March 31, 2002	Three Months Ended March 31, 2001	Year Ended December 31, 2001	Inception to December 31, 2000	Inception to March 31, 2002
	(In thousands, except per share amounts)				
Consolidated Statement of Operations Data:					
Revenues	$ 184	$ —	$ 918	$ —	$ 1,102
Operating Loss	(4,811)	(4,369)	(19,233)	(10,572)	(34,616)
Net Loss Accumulated During the Development Stage	(4,655)	(3,487)	(16,899)	(9,155)	(30,709)
Net Loss Per Share	$ (22.41)	$ (16.79)	$ (83.38)	$ (45.78)	$ (149.15)

	March 31, 2002	December 31, 2001	December 31, 2000
	(In thousands, except per share amounts)		
Consolidated Balance Sheet Data:			
Total Assets	$ 386,031	$ 390,788	$ 388,467
Total Long-Term Obligations(1)	318	326	358
Members' Equity	381,863	386,518	383,417

(1) Includes the current portion of long-term debt.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with, and is qualified in its entirety by, the historical financial statements and related notes included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategies for our business, includes forward-looking statements that involve risk and uncertainties. You should review the "Risk Factors" set forth elsewhere in this prospectus for a discussion of important factors which could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained herein. See "Forward-Looking Statements."

Development Activities

Valvino was organized in April 2000. Wynn Resorts was formed in June 2002, and before the consummation of this offering, Mr. Wynn, Aruze USA, Baron Asset Fund and the Kenneth R. Wynn Family Trust will contribute their Valvino membership interests to Wynn Resorts in exchange for all of the issued and outstanding shares of Wynn Resorts. Since Valvino's formation, our activities have been limited principally to arranging the design, construction and financing of Le Rêve and applying for certain permits, licenses and approvals necessary for the development and operation of Le Rêve. Wynn Resorts plans to develop, construct and operate Le Rêve as part of a world-class destination casino resort which, together with the new golf course located behind the hotel, will occupy approximately 192 acres of a 212-acre parcel of land at a premier location on the Las Vegas Strip in Las Vegas, Nevada. The site is the former location of the Desert Inn Resort & Casino. We expect Le Rêve to commence operations in March 2005.

Results of Operations

We have had no significant operations to date. In June 2000, we acquired the Desert Inn Resort & Casino assets from Starwood Hotels & Resorts Worldwide, Inc. We ceased operating the Desert Inn Resort & Casino after approximately ten weeks. We have demolished some of the buildings constituting the former Desert Inn Resort & Casino hotel in anticipation of the construction of Le Rêve. The remaining structures have been and will continue to be utilized as offices at least through the completion of Le Rêve. Since we ceased operating the Desert Inn Resort & Casino, our efforts have been devoted principally to the development activities described above with respect to Le Rêve. In addition, we continue to operate an art gallery displaying works from The Wynn Collection, which consists of artwork from Mr. and Mrs. Wynn's personal art collection, and, until summer 2002, the golf course located on the former Desert Inn Resort & Casino site. We also have spent considerable time preparing and presenting to the Macau government our proposal to obtain a provisional concession and negotiating the concession agreement and land agreement. Consequently, our historical operating results will not be indicative of future operating results.

Liquidity and Capital Resources

Overview of Expected Capital Resources and Commercial Commitments

As of March 31, 2002, approximately $387 million of the total project cost of approximately $2.4 billion (including the cost of the land, capitalized interest, pre-opening expenses and all financing fees) had been expended or incurred to fund the development of

Le Rêve. The remaining approximately $2 billion of the estimated development costs for Le Rêve is expected to be funded from a combination of:

- borrowings of approximately $747 million of the $750 million under our revolving credit facility;
- borrowings of $250 million under our delay draw term loan facility;
- borrowings of $150 million under our contemplated FF&E facility;
- anticipated interest income of approximately $27.9 million;
- gross proceeds from the expected offering of second mortgage notes of approximately $350 million; and
- gross proceeds from Wynn Resorts' initial public offering of approximately $355 million.

The following table summarizes certain information regarding our expected long-term indebtedness and commercial commitments at the completion of Le Rêve. All time periods in these tables are measured from the closing of this offering and are based upon our best estimate at this time of our expected long-term indebtedness and commercial commitments.

	Payments Due By Period				
Long-Term Indebtedness	**Total**	**Less than 1 Year**	**1-3 Years**	**4-5 Years**	**After 5 Years**
			(in millions)		
Revolving credit facility(1)	$ 747.0	—	—	—	$ 747.0
Delay draw term loan facility(2)	250.0	—	—	—	250.0
FF&E facility	150.0	—	—	—	150.0
Second mortgage notes	350.0	—	—	—	350.0
Other long-term obligations(3)	28.8	$ 0.2	$ 5.8	$ 22.7	0.1
Total long-term indebtedness	$ 1,497.1	$ 0.2	$ 5.8	$ 22.7	$ 1,525.8

	Amount of Commitment Expiration Per Period				
Other Commercial Commitments	**Total Amounts Committed**	**Less than 1 Year**	**1-3 Years**	**4-5 Years**	**Over 5 Years**
			(in millions)		
Construction contracts(4)	$ 911.8	240.1	$ 671.7		
Standby letter of credit(5)	$ 2.3	$ 2.3	—	—	—
Total commercial commitments	$ 914.1	$ 242.4	671.7	—	—

(1) This table assumes that indebtedness under our credit facilities will initially have a rating lower than BB- and Ba3 by Standard & Poor's Rating Group and Moody's Investors Service, Inc., respectively. If both initial ratings are equal to or higher than these ratings, then the interest rates and commitment fees would decrease and there would be a corresponding decrease of approximately $10.8 million in the revolving credit facility draw downs to fund such payments.

We anticipate that we will draw down approximately $747 million under the revolving credit facility to fund the design, construction, development, equipping and opening of Le Rêve. At such time as the total extensions of credit under the revolving credit facility equal or exceed $200 million, two of the three lead agents under that facility will have the right to convert between $100 million and $400 million of the outstanding revolving loans into term loans on the same terms and conditions as the term loans under the delay draw term loan facility or on such other terms as we and the administrative agent and syndication agent can agree.

(2) Term loans under this facility will be repayable in quarterly installments in amounts to be determined from the opening of Le Rêve until the seventh anniversary of the closing.

(3) Includes a loan from Bank of America, N.A. to our subsidiary, World Travel, secured by a Bombardier Global Express aircraft. Valvino acquired World Travel from Mr. Wynn and has quaranteed this loan. The loan calls for 47 monthly principal payments of $158,333, commencing March 1, 2003, and the payment of the aproximately $21.1 million remaining principal on March 1, 2007. See "Certain Relationships and Related Party Transactions—Aircraft Arrangements."

(4) Represents obligations under our signed construction contracts with Marnell Corrao and Bomel. We expect to sign additional contracts for the construction of Le Rêve. We expect to satisfy some of the payment obligations under these contracts using amounts borrowed under the long-term indebtedness shown above.

(5) Standby letter of credit for our owner-controlled insurance program.

Credit Facilities

Through our subsidiaries, we have entered into a commitment letter with Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC for a revolving credit facility of $750 million and a delay draw term loan facility of $250 million. The revolving credit facility will mature on the sixth anniversary of the closing of the credit facilities. Borrowings under the delay draw term loan facility will be available until the second anniversary of the closing of the credit facilities and will be repayable in quarterly installments in amounts to be determined from the opening of Le Rêve until the seventh anniversary of the closing of the credit facilities. The credit facilities are expected to close concurrently with the closing of this offering. All amounts outstanding under the credit facilities will bear interest, at our option (subject to certain limitations), at either (1) a base rate equal to the greater of the administrative agent's prime lending rate and 0.5% in excess of the federal funds rate or (2) the Eurodollar rate, as determined by the administrative agent, in both cases plus certain margins. For each year after Le Rêve commences operations, we will be required to prepay our borrowings under the credit facilities with a percentage of our excess cash flow (as it will be defined in our credit facilities), initially 75%, reducing to 50% and then to 0% as we meet certain leverage ratios and minimum rating requirements. The availability of financing under our credit facilities is subject to certain conditions, including the negotiation and execution of definitive agreements, the progress of the construction and other customary funding conditions for facilities of this kind.

Subject to applicable laws, including gaming laws and certain agreed upon exceptions, we expect that our debt facilities will be secured by liens on substantially all of the assets of our subsidiaries that are necessary to the development, construction, or operation of Le Rêve. For a description of the terms of our credit facilities, see "Description of Certain Indebtedness—Credit Facilities."

Second Mortgage Notes

Concurrent with this offering, we expect that Wynn Las Vegas and Wynn Capital, our subsidiaries, will jointly offer approximately $350 million in aggregate principal amount of second mortgage notes. We expect that the second mortgage notes will be secured by first priority liens on the account holding the proceeds of the second mortgage notes and by second priority liens on the assets that secure the credit facilities. For additional information about the terms of the second mortgage notes, see "Description of Certain Indebtedness—Second Mortgage Notes."

Wynn Resorts will not be a guarantor and will not be subject to the covenants in the second mortgage notes and the credit facilities. However, it will become a guarantor, but not subject to the covenants, under the second mortgage notes and the credit facilities if it incurs, or becomes a guarantor on, other indebtedness.

Release of Certain Collateral

After the third anniversary of commencing operations at Le Rêve, the liens on the approximately 137-acre golf course parcel will be released by the trustee and bank agent once we have achieved a total debt to earnings before interest, tax, depreciation and amortization ratio of 3.0 to 1.0 or less and if both of our credit facilities are rated BB+ or higher by Standard & Poor's Ratings Service and Ba1 or higher by Moody's Investors Service, Inc. immediately after giving effect to the release. Separately, certain portions of the golf course parcel will be released from the liens to permit residential or other non-gaming related development if we satisfy certain earnings before interest, taxes, depreciation and amortization targets for a full fiscal year after Le Rêve opens, so long as the development or construction will not interfere with the use of the golf course or impair the overall value of Le Rêve. In addition, two acres of the golf course parcel will be released from the liens to permit the construction of a home for Mr. Wynn, so long as the construction will not interfere with the use of the golf course or impair the overall value of Le Rêve and Mr. Wynn pays us fair market value for the property.

The liens on a 20-acre parcel fronting Las Vegas Boulevard adjacent to the site of Le Rêve will be released by the trustee and bank agent if we meet certain earnings before interest, taxes, depreciation and amortization targets for four consecutive calendar quarters after the commencement of operations at Le Rêve. Upon release by the trustee and bank agent, the golf course parcel, or portions of such parcel, and the 20-acre parcel will not be available as security for the second mortgage notes or the indebtedness under the credit facilities. See "Risk Factors—Risks Related to Our Substantial Indebtedness—Our indebtedness will be secured by a substantial portion of our assets."

Restrictions on Disbursements

We intend to deposit all of the net proceeds from the offering of the second mortgage notes in a secured account pledged to the second mortgage note holders pursuant to an agreement with the trustee for the second mortgage note holders. Pursuant to the terms of our credit facilities, we intend to use the proceeds of this offering before accessing the proceeds from the offering of the second mortgage notes or borrowing under the credit facilities. We do not expect to request disbursements of the second mortgage note proceeds or to borrow under the credit facilities until approximately ten to twelve months after the closing of this offering.

Our ability to receive disbursements from time to time of the second mortgage note proceeds from the secured account and to borrow under our credit facilities will be, in addition to other customary conditions to funding for these types of facilities, subject to various conditions, including the following:

- there shall be no default under our credit facilities or under the indenture governing second mortgage notes;
- the lenders under our credit facilities must be satisfied with our senior debt ratings;
-

our debt facilities must be "in balance," meaning that the undisbursed portions of the second mortgage note proceeds and our credit facilities, together with other funds available to us, must equal or exceed the remaining costs to complete construction;

- construction must be in substantial conformity with the plans for the project;
- we must certify that the project will be completed by August 31, 2005;

- there shall not have occurred any event that has caused or resulted in or could reasonably be expected to cause or result in a material adverse effect;
- all conditions set forth in the disbursement agreement for the disbursement of funds shall have been satisfied;
- arrangements reasonably satisfactory to the lenders under our credit facilities have been entered into and are in full force and effect to ensure that a gaming license for the project will be obtainable in the event that one of our major stockholders is unable to qualify for such license;
- we shall have obtained, if available on commercially reasonable terms, taking into account the state of the insurance market at such time and the then current practices of comparable projects, terrorism insurance in size and substance satisfactory to the lenders under our credit facilities; and
- the lenders under our credit facilities must be satisfied with the subcontractor bids received by our general contractor in respect of a specified percentage of the guaranteed maximum price under the construction contract, which percentage is to be mutually agreed upon by us and the lenders under our credit facilities.

See "Risk Factors—Risks Associated with Our Construction—Although we have commitments in place for most of the financing of the Le Rêve project, there are significant conditions to the funding of that financing." We expect that the funds provided by the sources described above and available cash will be sufficient to develop, construct and commence operations of Le Rêve and to pay interest on borrowings under our credit facilities, our contemplated FF&E facility and the second mortgage notes until the scheduled opening of Le Rêve, assuming there are no significant delay costs or construction cost overruns for which we are responsible. See "Risk Factors—Risks Associated with Our Construction—Development costs of Le Rêve are estimates only and actual costs may be higher than expected." Our credit facilities will contain conditions precedent to our entering into scope change orders that will increase the anticipated costs of the project. These conditions will require us to fund equity into an account subject to a security interest in favor of the lenders under our credit facilities and the holders of the second mortgage notes in an amount equal to the anticipated incremental cost of the change orders. In addition, if we do not complete construction of Le Rêve by August 31, 2005, we will be in default under our credit facilities, the indenture governing the second mortgage notes and our FF&E facility, and the holders of our indebtedness will have the right to accelerate our indebtedness and exercise other rights and remedies against us. See "Risk Factors—Risks Related to Our Substantial Indebtedness—We are highly leveraged and future cash flow may not be sufficient to meet our obligations, and we might have difficulty obtaining more financing."

FF&E Facility

We expect to enter into an agreement for an FF&E facility in a principal amount of $150 million. However, because we have not yet obtained a commitment for the FF&E facility, the terms of the anticipated FF&E facility are not yet known. We expect that our FF&E facility will be secured by specific fixed assets financed by that facility, including gaming equipment and devices such as slot machines. Such assets will also secure our credit facilities on a second priority basis and our obligations under the second mortgage notes on a third priority basis.

Corporate Jet

We also have assumed indebtedness of approximately $28.5 million under financing arrangements in connection with our acquisition of World Travel, the owner of our corporate jet, from Mr. Wynn. Our indebtedness with respect to the corporate jet will be secured by the jet. For more information, see "Use of Proceeds" and "Description of Certain Indebtedness."

Other Liquidity Matters

Following the completion of Le Rêve, we expect to fund our operations and capital requirements from operating cash flow, any funds remaining in the completion guaranty account and borrowings of up to $3 million under the revolving credit facility. Assuming that Le Rêve opens in March 2005, we expect that the aggregate principal amount outstanding under our credit facilities, our contemplated FF&E facility, the second mortgage notes and indebtedness financing our corporate jet will be approximately $1.53 billion. If completion of the project is delayed, then our debt service obligations accruing prior to the actual opening of Le Rêve will increase correspondingly. We cannot assure you, however, that our business will generate sufficient cash flow from operations or that future borrowings available to us under our credit facilities will be sufficient to enable us to service and repay our indebtedness and to fund our other liquidity needs. We may need to refinance all or a portion of our indebtedness on or before maturity and, if Wynn Resorts incurs debt to do this, it may become a guarantor under the second mortgage notes and the credit facilities. We cannot assure you that we will be able to refinance any of our indebtedness, including our credit facilities, our contemplated FF&E facility or the second mortgage notes on acceptable terms or at all. See "Risk Factors—Risks Related to Our Substantial Indebtedness—After Le Rêve opens, we may not generate sufficient cash flow to meet our substantial debt service obligations."

One of our subsidiaries, a special purpose subsidiary formed to be bankruptcy-remote, will be providing a $50 million completion guaranty in favor of the lenders under our credit facilities and our second mortgage note holders in connection with the construction and opening of Le Rêve. We will contribute $50 million of the net proceeds of this offering to that subsidiary to support its obligations under the completion guaranty. These funds will be deposited into a collateral account to be held in cash or short-term highly-rated securities, and pledged to the lenders under our credit facilities and second mortgage note holders to secure the completion guaranty, to be applied to the costs of the project as determined by the lenders under our credit facilities in accordance with the disbursement agreement. These funds will not be available to us until Le Rêve is completed and opens, at which time any amounts then remaining in the account will be released to us.

In addition, we will contribute $30 million of the net proceeds of this offering to Wynn Las Vegas to be held in a separate liquidity reserve account and pledged to the lenders under our credit facilities and second mortgage note holders to secure Wynn Las Vegas' obligation to complete Le Rêve. Until the opening of Le Rêve, these funds may be applied to the costs of the project, as the lenders under our credit facilities determine in accordance with the disbursement agreement. Following the opening of Le Rêve, these funds will be available to meet our working capital needs in connection with the operation of Le Rêve. Any remaining funds will not be released to us for any other purposes until we have met prescribed certain earnings before interest, taxes, depreciation and amortization targets for a full fiscal year after the opening of Le Rêve.

As noted above, we operate an art gallery displaying works from The Wynn Collection on the former premises of the Desert Inn Resort & Casino. We expect the art gallery to remain open during the construction of Le Rêve. We lease The Wynn Collection from Mr. and

Mrs. Wynn at a monthly rate equal to the gross revenue received by the gallery each month, less direct expenses, subject to a monthly cap. Our lease agreement with Mr. and Mrs. Wynn did not require any such lease payments through April 30, 2002. However, had we been required to make such payments, no amounts would have been due under the lease payment formula because, to date, our expenses in operating the art gallery have exceeded the revenue generated from such operations. Prior to opening Le Rêve, we do not expect to make any material payments under this lease. The only financial exposure that we have under this lease is the cost of operating the art gallery, which is not material. After specified notice periods, we or Mr. and Mrs. Wynn may terminate this lease.

New business developments or other unforeseen events may occur, resulting in the need to raise additional funds. For example, Wynn Resorts' articles of incorporation will provide that Wynn Resorts may redeem debt or equity securities, including our common stock, that are owned or controlled by an unsuitable person or its affiliates to the extent a gaming authority makes a determination of unsuitability and orders the redemption, or to the extent deemed necessary or advisable by the board of directors. The redemption price may be paid in cash, by promissory note or both, as required by the applicable gaming authority and, if not, as Wynn Resorts elects. Any promissory note that Wynn Resorts issues to an unsuitable person or its affiliate in exchange for its shares may increase our debt to equity and will increase our leverage ratio.

Quantitative and Qualitative Disclosures about Market Risk

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices. Our primary exposure to market risk will be interest rate risk associated with our revolving credit facility, delay draw term loan facility and contemplated FF&E facility, each of which will bear interest based on floating rates. We will attempt to manage our interest rate risk by managing the mix of our long-term fixed rate borrowings and variable rate borrowings. We are required to obtain interest rate protection through interest rate swap arrangements with respect to 50% of our term loans (including any revolving loans that may be converted into term loans). However, we cannot assure you that these risk management strategies will have the desired effect and interest rate fluctuations could have a negative impact on our results of operations.

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

Inflation and Foreign Currency Risk

We believe that our results of operations do not depend upon moderate changes in the inflation rate.

We do not currently conduct operations outside of the United States. However, if we develop our opportunity to build and operate one or more casinos in Macau, we will be subject to market risk with respect to the foreign currency exchange rate with Macau and other countries in the region.

BUSINESS

Overview

We are constructing and will own and operate Le Rêve, which we have designed to be the preeminent luxury hotel and destination casino resort in Las Vegas. Le Rêve will be situated at one of the premier locations on the Las Vegas Strip on the site of the former Desert Inn Resort & Casino, at the northeast corner of the intersection of Las Vegas Boulevard and Sands Avenue, one-half block north of The Venetian and Treasure Island at The Mirage and across Las Vegas Boulevard from the Fashion Show Mall.

Le Rêve is the concept of one of Wynn Resorts' principal stockholders and Chairman of the Board, Stephen A. Wynn, who was Chairman of the Board, President and Chief Executive Officer of Mirage Resorts and its predecessor from 1973 to 2000. In that role he was responsible for the development of some of the most successful, well-known casino-based entertainment resorts in the world, including Bellagio, The Mirage, Treasure Island at The Mirage and the Golden Nugget—Las Vegas in Las Vegas, Nevada, as well as the Atlantic City Golden Nugget in New Jersey and the Beau Rivage in Biloxi, Mississippi. At the time each of these resorts was completed, we believe that it was widely regarded as a significant major new attraction in its jurisdiction.

We expect Le Rêve, including the new golf course construction, to cost approximately $2.4 billion to develop, design, construct and open, including the cost of the land, capitalized interest, pre-opening expenses and all financing fees. We have scheduled ground-breaking to occur in September 2002, with an opening to the general public scheduled for March 2005.

We believe that Le Rêve will set a new standard of luxury and elegance for destination casino resorts in Las Vegas, much as Bellagio and, before it, The Mirage, did when they were built by Mirage Resorts under the guidance of Mr. Wynn. Bellagio is a European-style resort with a nine-acre lake inspired by Lake Como in Northern Italy, dancing fountains and classical gardens. The Mirage is a South Seas-themed resort with a 54-foot volcano, 100-foot atrium- enclosed garden, dolphin habitat and white tiger exhibit. Many of the people who are working with Mr. Wynn to develop Le Rêve worked with Mr. Wynn at Mirage Resorts to develop Bellagio and have extensive backgrounds in the development, construction and operation of major destination casino resorts.

Le Rêve will consist of a 48-story building, comprised of a 45-story hotel tower on top of a three-story low-rise building housing restaurants, retail outlets and the casino. Le Rêve will have a three-acre manmade lake in front of the hotel complex and a golf course behind it. At the entrance to the resort, bordering the Las Vegas Strip in front of our lake, we intend to construct a tree-lined, manmade "mountain" approximately eight stories tall featuring lush greenery and cascading waterfalls designed to create an intimate setting for the resort's main entrance and the restaurants and retail outlets around the lake.

We have designed Le Rêve to include 2,701 elegantly designed and richly furnished guest rooms, including 291 luxury suites and six villas. The shape of our hotel high-rise building is designed to follow the curved line of a gentle arc to provide each room with a view of the golf course, lake and "mountain" setting, or the surrounding mountains. Each of our spacious hotel rooms will be decorated with sophisticated interior design elements and materials. Le Rêve will also feature an approximately 118,400 square foot casino designed with a feeling of casual elegance and a floor layout with well-defined pathways to provide easy access to the casino for our gaming customers. Le Rêve's showroom, a venue with 2,080 seats suspended over an approximately 1,000,000 gallon performance pool, will be home to Franco Dragone's new water-based entertainment production. Mr. Dragone is the creative force behind Bellagio's

production of "O," Treasure Island at The Mirage's production of "Mystère" and Celine Dion's new production at Caesars Palace's "Colosseum," which is expected to open in the first quarter of 2003.

On the grounds of the hotel we intend to build Le Rêve's Tom Fazio/Steve Wynn-designed, exclusive 18-hole championship golf course. For the convenience of our hotel guests who are attending conventions and trade shows, Le Rêve will be conveniently located near the Las Vegas Convention Center across Paradise Road to the east, and the Sands Expo and Convention center, across Sands Avenue to the south.

Premier Location and Other Features of the Le Rêve Site

Le Rêve will be located on approximately 192 acres of land situated on the Las Vegas Strip at the site of the former Desert Inn Resort & Casino.

Premier position on the Las Vegas Strip. Le Rêve will occupy a premier position on the Las Vegas Strip at the northeast corner of the intersection of Las Vegas Boulevard and Sands Avenue. Le Rêve will have 1,350 feet of frontage on the Las Vegas Strip and will be located near some of the most visited hotel casino resorts and attractions on the Las Vegas Strip, including Bellagio, Caesars Palace, The Mirage, Treasure Island at The Mirage and The Venetian.

The Le Rêve site consists of approximately 55 acres of land, where the hotel complex will be built, and approximately 137 acres of land behind the hotel site on which the new golf course will sit. In addition, the site includes an undeveloped 20-acre parcel fronting Las Vegas Boulevard adjacent to Le Rêve which, as part of a Phase II development, we may develop into a second hotel/casino in the future, should it be released from the liens under our credit facilities and second mortgage notes. In total, the Le Rêve site consists of 212 acres. The back of the Le Rêve property runs along Paradise Road, a major artery in the resort corridor that leads directly to and from the McCarran International Airport, and the hotel will be across the street from each of the Las Vegas Convention Center and the Sands Expo and Convention Center. Le Rêve will be conveniently accessible in an average of approximately two to three minutes from the Spring Mountain Road exit off of Interstate 15, and in an average of approximately ten minutes from McCarran International Airport.

Golf course. We plan to construct a world-class, 18-hole championship golf course at the site of the former Desert Inn golf course. Based on current publicly available plans, when Le Rêve opens, we believe this golf course will be the only golf course on the site of a hotel casino resort on the Las Vegas Strip. Tom Fazio and Mr. Wynn, the designers of the Shadow Creek golf course affiliated with MGM Mirage, have designed our 6,900 yard, par 70 course. The Le Rêve golf course will be accessible only to hotel guests of Le Rêve. Unlike other courses available to visitors to Las Vegas, our golf course will be adjacent to the hotel, and will be visible from the windows of many of Le Rêve's hotel and convention rooms. We expect that Le Rêve's golf course will be available for play when Le Rêve opens.

Hotel/Casino building. We expect the resort complex to consist of a 48-story building, comprised of a 45-story hotel tower on top of a three-story low-rise building housing restaurants, retail outlets and the casino. The area of the building will total approximately 5.2 million square feet. The building is designed in the shape of an arc with the focal point being the Le Rêve lake, an approximately three-acre manmade lake in front of the hotel and the manmade "mountain" that will be built in front of the lake, bordering Las Vegas Boulevard.

Proximity to the Las Vegas Convention Center and the Sands Expo and Convention Center. Le Rêve will be adjacent to two of the nation's largest convention facilities. To the east, across Paradise Road, the back of the Le Rêve property borders the Las Vegas Convention Center. The Las Vegas Convention Center contains approximately 3.2 million square feet of space. According to the Las Vegas Convention and Visitors Authority, approximately 1.3 million visitors attended trade shows and conventions at the Las Vegas Convention Center during 2001. We anticipate that Le Rêve will be connected to the Las Vegas Convention Center by a pedestrian bridge over Paradise Road, and that the Las Vegas monorail at the intersection of Desert Inn Road and Paradise Road will meet the anticipated pedestrian bridge. In addition, we anticipate that our free shuttle service will transport convention and trade show attendees and other Le Rêve visitors to and from the Las Vegas Convention Center in less than four minutes. The shuttle service will run along the north perimeter of the golf course and will be able to move several thousand people per hour. We believe that this will be attractive to convention and trade show visitors who will not need to wait in long lines for taxicabs and can avoid traffic congestion around the Las Vegas Convention Center in travelling to or from Le Rêve.

To the south, Le Rêve will be directly across Sands Avenue from the approximately 1.2 million square foot Sands Expo and Convention Center. This complex will be within a short walking distance from Le Rêve's Sands Avenue entrance and we anticipate that Le Rêve will be connected to the Sands Expo and Convention Center by a pedestrian bridge. According to the public filings of Las Vegas Sands, Inc., the owner of the Sands Expo and Convention Center, approximately 1 million visitors attended trade shows and conventions at the Sands Expo and Convention Center during 2001.

We expect visitors to the Las Vegas Convention Center and the Sands Expo and Convention Center to be a source of room demand for Le Rêve during midweek periods when room demand by leisure travelers typically is lower.

Proximity to the Fashion Show Mall. Le Rêve will be directly across Las Vegas Boulevard from The Rouse Company's Fashion Show Mall. We anticipate that Le Rêve will be connected to the mall by a pedestrian bridge. The Fashion Show Mall contains premium retail stores such as Neiman Marcus, Saks Fifth

Avenue and Macy's and is currently undergoing a substantial remodeling and expansion program, which is expected to be completed by October 2003. When the remodeling and expansion are completed, the Fashion Show Mall is expected to house a number of new stores, including Nordstrom, Lord & Taylor and Bloomingdale's Home & Furniture. We anticipate that the proximity of the Fashion Show Mall to our retail shops will draw significantly more shoppers to the area.

Additional parcels for possible future growth through development. We will use portions of the property located north of Le Rêve along Las Vegas Boulevard for corporate offices, pre-opening activities, recruiting and employment purposes and employee parking while we are constructing Le Rêve. If we meet prescribed cash flow tests for four consecutive calendar quarters after commencement of operations at Le Rêve, a 20-acre parcel north of Le Rêve will be released from the liens under our credit facilities and the indenture governing the second mortgage notes and, in that event, we may decide to develop the parcel in the future, either on our own or through a joint venture. For example, in the future, we may decide to develop a second hotel casino as a Phase II development on the parcel to take advantage of Le Rêve's planned substantial infrastructure and amenities planned for Le Rêve. The Le Rêve design includes a major access corridor that could be used to connect a Phase II development to Le Rêve.

Similarly, three years after commencement of operations at Le Rêve and upon our satisfaction of prescribed maximum leverage ratio and minimum credit rating requirements, the land underlying the golf course will be released from the liens under our credit facilities and the indenture governing the second mortgage notes. Should the land be released from the liens, the golf course parcel and our related property rights present further opportunities for future development. In addition, portions of the golf course land may be released from the liens to permit residential or other non-gaming development if we satisfy prescribed cash flow tests for a full fiscal year after Le Rêve commences operations.

Water rights. Wynn Resorts indirectly owns 935 acre-feet of certificated water rights through its subsidiary, Desert Inn Improvement Co. We plan to use this water for general irrigation purposes including irrigation of the golf course. Desert Inn Improvement Co. also currently provides water service to the existing office building on the site of the former Desert Inn Resort & Casino and the remaining homes around the golf course and, as a result, is a public utility under Nevada law. Desert Inn Improvement Co. does not use these water rights to provide water to its public utility customers. Under Nevada law, we will need to obtain the approval of the Public Utilities Commission of Nevada before Wynn Resorts completes this offering. We cannot assure you that such approval will be granted in a timely manner or at all.

Valvino owns an additional 50 acre-feet of certificated water rights. This water will be used to supply the water for the Le Rêve lake, subject to the approval of the Nevada State Engineer. There are significant cost savings and conservation benefits associated with using water supplied pursuant to our water rights.

Business and Marketing Strategy for Le Rêve

Our business strategy for Le Rêve is to offer our guests a luxurious experience at a premier destination casino resort in Las Vegas. We believe that the quality of our hotel, the gaming experience that we intend to offer and the restaurants, retail outlets, entertainment offerings, golf course and other amenities at the resort will enable Le Rêve to set a new standard of luxury and elegance among destination casino resorts in Las Vegas.

Apply the "Wynn Brand" and Experience

We believe that Mr. Wynn's role with Le Rêve provides a distinct advantage over other Las Vegas gaming enterprises. We believe that Mr. Wynn is widely viewed as the premier designer, developer and operator of destination casino resorts in Las Vegas and, as such, has in effect developed a "brand name" status in the gaming industry.

While Mr. Wynn was Chairman of the Board of Mirage Resorts, he conceived of and oversaw the development and operation of some of the most successful, well-known casino-based entertainment resorts in the world, including Bellagio, The Mirage, Treasure Island at The Mirage, the Golden Nugget—Las Vegas in Las Vegas, Nevada, as well as the Atlantic City Golden Nugget in New Jersey and the Beau Rivage in Biloxi, Mississippi. Mr. Wynn served as Chairman of the Board, President and Chief Executive Officer of Mirage Resorts and its predecessor for 27 years, until 2000, when MGM Grand acquired Mirage Resorts for approximately $6.4 billion. The public filings and press releases of Mirage Resorts and MGM Mirage report that in fiscal year 1999, the last full year of Mr. Wynn's tenure with Mirage Resorts, the company had grown to own and operate eight hotel casino resort properties totaling 630,000 square feet of casino gaming space and 16,577 hotel rooms that generated approximately $2.4 billion in revenue, $573 million in earnings before depreciation, interest, taxes and pre-opening costs and $110.4 million in net income.

In the major hotel destination casino resorts he has previously developed, Mr. Wynn has successfully employed a formula which integrates luxurious surroundings, upscale design, distinctive entertainment and superior amenities, including fine dining and high-end retail offerings, to create resorts that appeal to a variety of customers, especially high-end customers. We believe that Le Rêve will be Mr. Wynn's most innovative work to date. We also expect to capitalize on the widespread reputation of Mr. Wynn as a premier gaming entrepreneur.

Create a "Must-Visit" Destination Casino Resort on the Las Vegas Strip

We believe that Le Rêve will represent a natural extension of the concepts Mr. Wynn has utilized in developing other major destination casino resorts. Following Mr. Wynn's formula, we plan to draw customers to Le Rêve by offering high-quality, non-gaming amenities such as fine dining, premier retail shopping and distinctive entertainment in intimate, luxurious surroundings so that the property, rather than the theme, will be the attraction. We will seek to differentiate Le Rêve from other major Las Vegas resorts by concentrating on our fundamental elements of design, atmosphere, personal service and level of luxury. Le Rêve will offer our guests lush landscaping and tiered waterfalls, an approximately three-acre lake in front of the hotel that guests can view only after entering the property and an arc-shaped hotel tower instead of the three-pointed "Y" and four-pointed "X" configurations that have become commonplace among Las Vegas hotel casino resorts.

We are designing Le Rêve to have richly furnished, spacious guest rooms, an upscale setting and superior amenities to provide visitors with a new standard of luxury and refinement. Le Rêve will have a luxurious environment with a sophisticated, casually elegant ambiance rather than being focused on a highly

themed experience like many other hotel casino resorts on the Las Vegas Strip. We believe that, over time, Le Rêve's more generally themed casually elegant environment, together with its high-end amenities, superior level of service and distinctive attractions, will have greater lasting appeal to customers than a resort with a particular theme and numerous attractions based on that theme. We also believe that the elegance of Le Rêve, and its convenient location on the Las Vegas Strip, will appeal to a variety of market segments, including high-end, casino, convention, leisure and tour and travel customers.

Create the First New Major Hotel Casino Resort on the Las Vegas Strip in Over Four Years

Although a number of hotel casino resorts have announced or begun construction of expansion projects that will add to the number of hotel rooms on the Las Vegas Strip, we are not aware of any other major new hotel casino resort that plans to open on the Las Vegas Strip before Le Rêve. Therefore, at the time of Le Rêve's planned opening in March 2005, we believe that it will have been more than four years since a major new hotel casino resort opened on the Las Vegas Strip. As a result, we expect that there will be a high level of anticipation for Le Rêve. We intend to capitalize on this high level of anticipation, as well as the tendency of customers in the Las Vegas market to gravitate toward new attractions and locations. When Bellagio opened there was widespread publicity in newspapers, radio and other media outlets. We anticipate that publicity regarding Le Rêve's opening will be comparable.

Provide an Experience of the Highest Standard of Luxury in an Atmosphere of Casual Elegance

We are designing Le Rêve to appeal to upscale clientele looking for a first-class environment of elegance, sophistication and luxury. We will seek to attract a range of

customers, including middle market customers and high-roller and premium gaming patrons, by providing guests with a premium level of luxury, amenities and service.

We believe that the key elements of our approach include:

- Providing hotel guests with what we believe will be the most luxurious hotel resort environment on the Las Vegas Strip, including richly furnished standard guest rooms consisting of approximately 620 square feet, which we believe are larger than standard rooms generally available on the Las Vegas Strip, elegantly appointed suites beginning at approximately 1,250 square feet, fairway lanai suites beginning at approximately 2,200 square feet and six large villas averaging approximately 7,100 square feet;

- Offering a casually elegant casino featuring approximately 2,000 slot machines and 120 table games with gaming limits to accommodate a full range of casino customers;

- Providing an intimate setting by minimizing walking distances throughout the hotel with a well-designed, organized floor plan intended to facilitate guest orientation and familiarity with the property;

- Featuring a tree-lined, manmade "mountain" approximately eight stories tall along Las Vegas Boulevard enclosing the area in front of the hotel, including an approximately three-acre manmade lake, to create an intimate environment for our guests;

- Offering extensive recreational facilities and amenities for guests, such as a newly constructed Tom Fazio/Steve Wynn-designed, exclusive 18-hole championship golf course on the premises which will only be open to hotel guests;

- Offering 18 dining outlets, including six fine-dining restaurants;

- Featuring at Le Rêve's 2,080-seat showroom a new water-based entertainment production created by Franco Dragone, the creative force behind Bellagio's production of "O," Treasure Island at The Mirage's production of "Mystère" and Celine Dion's new production at Caesars Palace's "Colosseum," which is expected to open in the first quarter of 2003;

- Offering our on-site, full-service Ferrari and Maserati dealership;

- Offering an art gallery displaying works from The Wynn Collection, which at various times has included works by such masters as Paul Cézanne, Paul Gaugin, Édouard Manet, Henri Matisse, Amedeo Modigliani, Claude Monet, Pablo Picasso and Vincent Van Gogh;

- Providing a high level of guest service at Le Rêve designed to surpass that offered at any destination casino hotel in Las Vegas; and

- Offering our guests easy access to premium shopping either at Le Rêve or across the street at the newly expanded and renovated Fashion Show Mall.

Appeal to "High-Roller" and Premium Gaming Patrons

We believe that the premium level of luxury, sophistication and service we intend to offer at Le Rêve, together with Mr. Wynn's experience and reputation in building and operating premier Las Vegas destination casino resorts, will appeal to high-roller gaming patrons, including wealthy international and domestic gaming patrons. In addition to the main casino, Le Rêve will offer a baccarat salon and high-limit private gaming rooms designed to create a sense of comfort and exclusivity for high-end gaming customers. In addition to standard hotel guest rooms, Le Rêve will offer 291 suites and six villas, all elegantly decorated and furnished.

We also expect to capitalize on the substantial network of international and domestic high-roller and premium customers who are familiar with Mr. Wynn from his tenure at Mirage Resorts. We believe that in operating some of the signature properties in Las Vegas, Mr. Wynn has developed a high degree of customer recognition and guest loyalty and therefore believe that Le Rêve will attract wealthy international and domestic gaming customers. We believe that Mr. Wynn's reputation will attract experienced, high-level international and domestic casino marketing executives. Le Rêve plans to have marketing executives located in

local offices in Tokyo, Hong Kong, Singapore, Taiwan, Europe, New York and southern California, as well as independent marketing representatives in major U.S. and foreign cities. Mr. Wynn is not bound by any non-competition or non-solicitation agreements with MGM Mirage arising out of the acquisition of MGM Grand's acquisition of Mirage Resorts.

Use Le Rêve's Non-Gaming Facilities to Generate Substantial Revenue

We have planned Le Rêve as a luxury destination resort with amenities designed to generate substantial non-gaming revenue. We expect that non-gaming revenue will account for a substantial portion of our overall revenue. We expect the primary sources of this non-gaming revenue to include:

- 2,404 standard guest rooms, 291 suites with superior design elements and furnishings and six villas;
- 18 dining outlets, including six fine dining restaurants, as well as various bars and lounges and a nightclub, several of which will be located around the Le Rêve lake;
- the Tom Fazio/Steve Wynn-designed, championship golf course;
- the 2,080-seat showroom featuring Franco Dragone's new water-based entertainment production;
- approximately 78,200 square feet of retail shopping area, which we expect will feature brand name and high-end boutiques;
- a world-class spa, salon and fitness complex offering high-end spa treatments, state-of-the-art fitness equipment and private label and branded skin and body treatment products;
- our art gallery displaying works from The Wynn Collection;
- our on-site, full-service Ferrari and Maserati dealership;
- two wedding chapels; and
- banquet facilities and approximately 130,000 net square feet of convention and meeting space, including a grand ballroom, a junior ballroom and meetings rooms, as well as boardrooms and a business center, all featuring views of our golf course or swimming pools.

Capitalize on the Close Proximity of the Resort to the Las Vegas Convention Center and the Sands Expo and Convention Center

According to Tradeshow Week 200, Las Vegas was the most popular trade show destination in the United States in terms of net square footage and number of trade week 200 shows in 2001, and one of the most popular convention destinations in the United States. Le Rêve will be adjacent to two of the largest trade show and convention facilities in the United States, the Las Vegas Convention Center and the Sands Expo and Convention Center. We expect visitors to the Las Vegas Convention Center and the Sands Expo and Convention

Center to be a source of room demand for Le Rêve during mid-week periods when room demand by leisure travel is typically lower. We believe that our proximity to these trade show and convention facilities will make Le Rêve particularly attractive to business customers who attend trade shows and conventions. In particular, we expect that our free shuttle service will transport trade show and convention attendees and other Le Rêve visitors to and from the Las Vegas Convention Center in less than four minutes. Additionally, we expect each guest room will have a dedicated high-speed Internet connection utilizing state-of-the-art broadband connections that, for a fee, can be upgraded for in-room wireless Internet access with an adapter. Generally, this type of broadband connection is not currently available in the guest rooms of other hotels in Las Vegas. Because of this source of room demand, we believe that we will be able to charge mid-week room rates higher than those of other Las Vegas Strip hotels.

Provide a Basis for Future Growth Through Development

We currently own approximately 212 acres of land, comprised of an approximately 55-acre plot on which Le Rêve is being constructed, an approximately 137-acre plot located behind the hotel on which the new golf course will be built, and an additional parcel of approximately 20 acres fronting Las Vegas Boulevard next to the Le Rêve site. We will use the 20-acre parcel while we are constructing Le Rêve for our corporate offices, pre-opening activities, recruiting and employment purposes and employee parking. If we meet prescribed cash flow tests for four consecutive calendar quarters after commencement of operations at Le Rêve, the 20-acre parcel will be released from the liens under our credit facilities and second mortgage notes and, in that event, we may decide to develop the parcel in the future. For example, in the future, we may decide to develop a second hotel casino as a Phase II development on the parcel to take advantage of the substantial infrastructure and amenities planned for Le Rêve. The Le Rêve design will include a major access corridor that could be used to connect a Phase II development to Le Rêve.

In addition, the approximately 137-acre parcel on which our new golf course will be constructed will be released from the liens under our credit facilities and second mortgage notes, and will also be available for development, three years after the commencement of operations at Le Rêve and upon the achievement of prescribed maximum leverage ratio and minimum credit rating requirements. Portions of this parcel may be released from the liens to permit residential or other non-gaming development if we satisfy prescribed cash flow tests for a full fiscal year after Le Rêve commences operations and the development does not interfere with the use of the golf course and would not reasonably be expected to impair the overall value of Le Rêve.

Capitalize on Le Rêve's Experienced Management Team

The members of our management team have extensive experience in developing and operating large scale hotels and casinos. Our management team includes:

- Stephen A. Wynn, who will be Chief Executive Officer and Chairman of the Board of Wynn Resorts and previously served as Chairman of the Board, President and Chief Executive Officer of Mirage Resorts and its predecessor;

- Marc D. Schorr, who will be Chief Operating Officer of Wynn Resorts and previously served as President of The Mirage Casino-Hotel;

- Rob Oseland, who will be Chief Operating Officer of Wynn Las Vegas and previously served as Vice President of Slot Operations at Bellagio;

- Linda Chen who will be Executive Vice President of Wynn Las Vegas and previously served as Executive Vice President of Far East Marketing of Bellagio, LLC.

- Doreen Whennen who will be Executive Vice President of Wynn Las Vegas and previously served as Executive Vice President of Far East Marketing of Bellagio, LLC. Vice President of Hotel Operations of Wynn Las Vegas and previously served as Vice President of Hotel Operations of Mirage Resorts;

- Kevin Stuessi who will be Vice President—Food & Beverage of Wynn Las Vegas, and previously served as Vice President of Food Service Planning of Mirage Resorts;

- Karen Bozich who will be Vice President—Chief Information Officer of Wynn Las Vegas, and oversaw the information systems requirements for the design, building and opening of Bellagio and Beau Rivage;

- Pete Lexis who will be Vice President—Customer Development of Wynn Las Vegas and previously served as Vice President of Casino Marketing of Desert Inn Hotel & Resort; and

- Allen McNeary who will be Vice President—Retail Operations of Wynn Las Vegas, and was previously a principal at Dembart-McNeary Group, a brand development consultancy and held management positions at several Fortune 500 brand marketing companies.

We believe that the experience, talent and commitment of the members of our management team provide a substantial competitive advantage.

Carefully Manage Construction Costs and Risks

Wynn Design & Development, a wholly owned subsidiary of Wynn Resorts, is responsible for managing construction costs and risks associated with the project. Marnell Corrao will be the builder and general contractor for Le Rêve. Marnell Corrao has extensive experience in building large Las Vegas destination resorts, including Bellagio, The Mirage, Treasure Island at The Mirage and New York-New York Hotel and Casino. We expect the total development cost of Le Rêve to be approximately $2.4 billion, including the cost of the land, capitalized interest, pre-opening expenses and all financing fees. Of that amount, the design and construction costs are estimated to be approximately $1.375 billion. We have entered into a guaranteed maximum price construction contract covering approximately $902 million of the budgeted construction cost, subject to increases based on scope changes and other exceptions, to construct the Le Rêve hotel and casino. Plans for a substantial portion of the budget for this contract have not been finalized. We plan to implement specific mechanisms that are intended to reduce the risk of construction cost overruns and delays, including:

- a $32.1 million owner's contingency that we may use, subject to conditions that our lenders may impose, to cover owner-created delays and owner-originated changes in the scope of the work;

- a liquidated damages provision requiring Marnell Corrao to pay us $300,000 for each day the completion of construction is delayed, following a five-day grace period and subject to force majeure and other permitted extensions, up to a maximum amount of $9 million;

- a $150 million contractor performance and payment bond securing Marnell Corrao's obligations under the construction contract;

- a guaranty by Marnell Corrao's parent company, Austi, of Marnell Corrao's full performance under the construction contract until final payment under that contract;

- a $50 million completion guaranty in favor of the lenders under our credit facilities and second mortgage note holders by our special purpose subsidiary, which guaranty will be secured by $50 million of the proceeds of this offering deposited in a collateral account and pledged to the lenders under our credit facilities and second mortgage note holders, to be applied to the costs of the project as, the lenders under our credit facilities determine in accordance with disbursement agreement;

- a separate liquidity reserve account to be held by Wynn Las Vegas into which we will deposit $30 million of the net proceeds of this offering pledged to the lenders under our credit facilities and second mortgage note holders to secure Wynn Las Vegas' obligation to complete the project and to be applied to the costs of the project as the lenders under our credit facilities determine in accordance with the disbursement agreement; and

- budgeted interest and commitment fees on our debt facilities for four months after our scheduled opening.

The completion guaranty funds will not be available to us until Le Rêve opens, and the liquidity reserve funds will not be available to us, other than to meet our working capital needs, until we have met prescribed cash flow tests for a full fiscal year after the opening of Le Rêve.

We have entered into a separate design/build contract with Bomel for the design and construction of the parking structure. Bomel has extensive experience constructing parking structures, including garages at Paris Las Vegas, Green Valley Ranch Station and The Palms Casino Resort. We expect to solicit competitive bids in summer 2002 for construction of the new golf course and to award the contract in the third quarter of 2002. We expect that the newly constructed golf course will be available for play when Le Rêve opens.

The Steve Wynn "Brand"

We expect to capitalize on the widespread recognition of Mr. Wynn, who we believe is widely viewed as the premier designer, developer and operator of destination casino resorts in Las Vegas. The following chart compares certain salient features of The Mirage and Bellagio with the features and amenities that we anticipate Le Rêve will offer.

	The Mirage(1)	Bellagio(1)	Le Rêve
Year of Opening	1989(2)	1998(2)	End of 2004
Approx. Property Acreage	83(3)	90	192(4)
Total Hotel Rooms (#)	3,044	3,005	2,701
Approx. Total Casino Sq. Ft.	107,200	155,000	118,400
Table Games (#)	120	141	120
Slot Machines (#)	2,294	2,433	2,000
Restaurants (#)	14(5)	17(6)	18
Approx. Retail Sq. Ft.	35,000(2)	92,610(6)	78,200
Approx. Convention Sq. Ft. (Gross)(7)	170,000(8)	125,000(6)	200,000
Show Rooms Seating (#)	2,769(8)	1,800(6)	2,080
Entertainment/Attractions	• 54 ft. erupting volcano • Dolphin habitat • 100 ft. atrium with tropical garden • Siegfried & Roy show • Shadow Creek golf course(9) • Danny Gans Show	• Dancing fountains • "O" (Cirque du Soleil) • Botanical conservatory • Art gallery	• Art gallery(10) • Franco Dragone's water-based entertainment production • Adjacent championship golf course • Atrium garden feature • Mountain/lake setting • Ferrari/Maserati dealership

(1) Unless otherwise indicated, the information provided for The Mirage and Bellagio is contained in the Annual Report on Form 10-K for the fiscal year ended December 31, 2001 filed by MGM Mirage.

(2) As reported in the Annual Report on Form 10-K for the fiscal year ended December 31, 1998 filed by Mirage Resorts.

(3) As reported in the Annual Report on Form 10-K for the fiscal year ended December 31, 1992 filed by Mirage Resorts. This number does not include the Shadow Creek golf course, which is located off-site.

(4) Le Rêve is located on an approximately 55-acre parcel of the property. The golf course will occupy approximately 137 acres of the property. This number does not include our parcel of approximately 20 acres currently used for our corporate offices, pre-opening activities, recruiting and employment purposes and employee parking.

(5) Based on information provided by The Mirage.

(6) Based on information provided by Bellagio.

(7) Includes circulation (corridors) and patio space.

(8) Based on information located at *www.mirage.com.*

(9) Shadow Creek golf course is located off-site approximately twelve miles from The Mirage.

(10) Featuring works from The Wynn Collection.

The Le Rêve Resort

The Hotel. We have designed Le Rêve's hotel tower to be a 48-story building, comprised of 45 stories of hotel rooms and suites on top of a three-story low-rise building housing restaurants, retail outlets and the casino. The building will have a total area of approximately 5.2 million square feet. The high-rise building is configured in the shape of a gentle arc with the focal point of the tower being the Le Rêve lake, an approximately three-acre manmade lake situated in front of the hotel, and the manmade "mountain" in front of the lake along the Las Vegas Strip. We are designing the Le Rêve lake and "mountain" to provide special effects intended to entertain our guests and the pedestrians who come to our hotel and casino.

The Le Rêve hotel guest main arrival area will feature an atrium garden adjacent to the registration desk with a view of Le Rêve lake below. We are designing Le Rêve to provide an intimate setting by minimizing walking distances throughout the hotel with a well-designed, organized floor plan to facilitate guest orientation and familiarity with the property. On average, walking distances from the registration hosts to the guest elevators will be only 460 feet. Comparative distances at The Venetian, Bellagio and The Mirage are approximately 530 feet, approximately 545 feet and approximately 570 feet, respectively. Once the guests arrive on their floor, the maximum walking distance to the most remote guest room will be approximately 240 feet, as compared to similar hotels such as Bellagio, The Mirage, Treasure Island at The Mirage and The Venetian at approximately 360 feet.

We intend to decorate our 2,404 standard guest rooms with sophisticated interior design elements and materials. We plan for the standard guest rooms to have a floor layout of approximately 620 square feet, which is approximately 100 to 125 square feet more than the industry standard for a standard guest room. The arc-shaped design of our high-rise building has enabled us to design these rooms with widened entryways consisting of six-foot wide marble foyers. We believe that our standard rooms will contain elements of luxury, comfort and business utility that will distinguish them from other Las Vegas hotel rooms. All standard rooms will have views of either the golf course or Las Vegas Boulevard and also will have large working desks equipped with convenient and accessible electrical outlets and dedicated high-speed Internet connections. Standard room bathrooms will have an oversized countertop, double sinks, a makeup area and television, a glass shower enclosure, a separate toilet compartment and a bathtub for two.

We also plan for Le Rêve to provide single and multiple bedroom luxury suites with superior amenities and furnishings designed to accommodate high-end hotel guests. Le Rêve will offer 270 parlor and salon suites (beginning at approximately 1,250 square feet) located in the tower of the hotel high-rise building and 21 one- and two-bedroom fairway lanai suites (beginning at approximately 2,200 square feet) located on the east side of the low-rise complex overlooking the golf course. The high-rise suites will be separated from the standard guest rooms on each floor, effectively creating a separate but adjoining "suite tower" accessible only to suite occupants. Occupants of the suites can also make use of a special hotel garden entrance to the hotel, located off of the south porte cochere VIP arrival area, as well as an exclusive elevator for the suites. The suites will be conveniently located near the casino and some of the fine-dining restaurants.

We have designed these elegant and spacious suites to satisfy the expectations of the highly sought-after international gaming customer. The salon suites' living rooms and bedrooms are designed to have views overlooking the Las Vegas Strip or Las Vegas' surrounding geography. We plan for each salon suite to feature a luxurious lounge area with a media center, adjacent dining or conference area, wet bar and oversized bathroom.

We believe that the location of our lanai suites on the golf course fairway will be especially attractive to our VIP gaming customers and hotel guests who desire the peace and privacy of staying in more secluded living quarters detached from the main hotel complex. The 21 fairway lanai suites will be situated in a three-story structure with seven suites on each floor and will be conveniently located near our four swimming pools. Each of our fairway lanai suites will have its own private patio overlooking the golf course and will include programmable guestroom controls to accommodate many of the native languages of our hotel guests. Each of our suites will be decorated and furnished to satisfy the most discriminating tastes and clientele.

We also will offer three two-bedroom and three four-bedroom villas located in the low-rise structure of our hotel. Our villas will average approximately 7,100 square feet. Our villas will be accessible via a private entry located off of the south porte cochere VIP arrival area and will be conveniently located close to our retail stores and fine-dining restaurants.

The Casino. We expect Le Rêve to have an approximately 118,400 square foot casino located in the center of the first level of the low-rise building. Le Rêve's casino will be designed with a feeling of casual elegance and color palettes that complement Le Rêve's resort setting. We have planned the casino to have a well-organized floor plan and well-defined pathways that will allow our patrons easy access to the casino. The casino's main gaming area will contain approximately 120 table games and 2,000 slot machines, a race and sports book, poker room and keno lounge. Our gaming limits will accommodate a full range of casino customers. In addition, Le Rêve will have a baccarat salon and private gaming rooms with direct access from the "suite tower." Each private gaming room will be elegantly appointed with its own private dining room and patio terrace overlooking Le Rêve's pools. We will market the casino directly to gaming customers using database marketing techniques, slot clubs and traditional incentives, such as reduced room rates and complimentary meals and suites. We will offer high-roller gaming customers premium suites and special hotel services.

The Golf Course. As described above, based on current publicly available plans, when Le Rêve opens, it will have the only golf course located on the site of a hotel casino resort on the Las Vegas Strip. We expect that the par 70, 18-hole championship golf course, which will be accessible only to hotel guests of Le Rêve, will feature three lakes and a series of meandering streams that will carve their way from the west to east end of the property. The 18th green will have a view of an approximately 30 foot waterfall. We have designed the golf course with dramatic elevation changes and plan to include water on almost every hole.

Restaurants, Lounges, Bars and Nightclub. We plan to offer 18 food and beverage outlets, including six fine-dining restaurants and a 600-seat buffet. We plan to follow the approach Mr. Wynn utilized at Mirage Resorts in seeking to persuade signature chefs to either move to Las Vegas or open second versions of restaurants that are well-known in other cities. We plan to engage a number of well-known interior designers to decorate and stylize Le Rêve's numerous restaurants. We expect Le Rêve to offer a full complement of lounges and bars and a nightclub. Several of our restaurants are planned to overlook the Le Rêve lake and will offer outdoor lounges and/or dining areas.

Showroom. Le Rêve's showroom will be customized to accommodate the unveiling of Franco Dragone's new water-based entertainment production. Mr. Dragone is the creative force behind Bellagio's production of "O" and Treasure Island at The Mirage's production of "Mystère," as well as Celine Dion's new production at the approximately 4,000-seat performing arts "Colosseum" currently being constructed by Caesars Palace and scheduled for completion in the first quarter of 2003. "O" and "Mystère" have been consistently sold out since opening.

The showroom will be connected via a corridor to the casino and will be conveniently located adjacent to the parking garage so that minors will not have to walk through the casino to enter the venue. The showroom will seat 2,080 guests and will feature an approximately 1,000,000 gallon performance pool. The seating for the showroom is designed to extend around the performance area a full 360 degrees and to be suspended over the performance pool with no seat farther than approximately 42 feet from the performance area.

The Art Gallery. Le Rêve will also offer an art gallery displaying rare paintings from The Wynn Collection. The Wynn Collection consists of works from 19th and 20th century European and American masters, and at various times has included works by Paul Cézanne, Paul Gaugin, Édouard Manet, Henri Matisse, Amedeo Modigliani, Claude Monet, Pablo Picasso and Vincent Van Gogh. Several of these paintings were on display at Bellagio before MGM Grand's acquisition of Mirage Resorts. Subject to certain notice restrictions, Mr. and Mrs. Wynn will retain the right to remove or replace any or all of the works of art that will be displayed in the art gallery. We currently operate the art gallery and pay for the insurance on the works of art and will continue to do so after Le Rêve opens. We lease The Wynn Collection from Mr. and Mrs. Wynn at a monthly rate equal to the gross revenue received by the gallery each month, less direct expenses, subject to a monthly cap. Prior to opening Le Rêve, we do not expect to make any material payments under this lease. The only financial exposure that we have under this lease is the cost of operating the art gallery, which is not material. After specified notice periods, we or Mr. and Mrs. Wynn may terminate this lease.

Ferrari and Maserati Dealership. We have entered into letters of intent with Ferrari North America, Inc. and Maserati North America, Inc. to open an authorized on-site, full-service Ferrari and Maserati dealership. We expect that our franchises will include an underground service area, as well as a café and retail store. Currently, there are only 29 Ferrari dealerships in the United States and we expect ours to be the first in Nevada. The dealership will be located near the main entrance to the hotel.

The letters of intent require us to submit designs and plans for the dealership to Ferrari North America and Maserati North America for approval and to satisfy certain financing and other conditions. If we are approved to operate the franchises, Ferrari North America and Maserati North America will have first and senior priority security interests in their respective franchises. Under the letters of intent, no changes in the proportional equity interests in Wynn Resorts held by Mr. Wynn, Aruze USA, Baron Asset Fund and our public stockholders as a group upon consummation of this offering can be made without the approval of Ferrari North America and Maserati North America.

Retail Space. Le Rêve will contain approximately 78,200 square feet dedicated to retail shops. We expect to lease approximately half of the shops to tenants operating boutiques, including brand name and high-end boutiques. We plan to operate the remaining stores, including a golf shop and other shops selling, among other things, men's clothing, women's apparel and accessories, art, watches and sundries. Some of Le Rêve's shops will be dedicated to selling proprietary products specially created for Le Rêve.

The Spa, Salon and Fitness Complex. We will own and operate a world-class spa, salon and fitness complex offering high-end spa treatments and fitness equipment and custom label and branded skin and body treatment products, as well as clothing, accessories, and athletic wear. The 38,000 square foot spa and salon complex will be directly accessible from the main guestrooms, the suites and villas, and pool deck elevators.

Swimming Pools. Le Rêve will offer its guests four outdoor swimming pools and two whirlpool spas. One swimming pool and one whirlpool spa will be dedicated for the exclusive use of our suite guests. The pool areas will feature cabanas and lush landscaping.

Convention, Meeting and Reception Facilities. Le Rêve will feature approximately 200,000 square feet (including corridors and patio space), including a grand ballroom, a junior ballroom and meeting rooms with outdoor patios overlooking either the pool area or the golf course, as well as boardrooms and a business center. Covered patios off of the meeting rooms are available as pre-function or break-out areas.

The Wedding Chapels. Le Rêve will include two intimate wedding chapels that we expect to seat 60 guests each.

Parking. Our north parking garage, which will have easy access to our hotel, will provide approximately 1,840 parking spaces for our guests and other visitors. The second level of the north parking garage will connect to a retail promenade that will lead to our casino. We will have two levels of valet parking under the hotel and a separate parking area for employees located on the 20-acre parcel next to the Le Rêve. In total, there will be approximately 3,950 parking spaces available to employees and guests of Le Rêve.

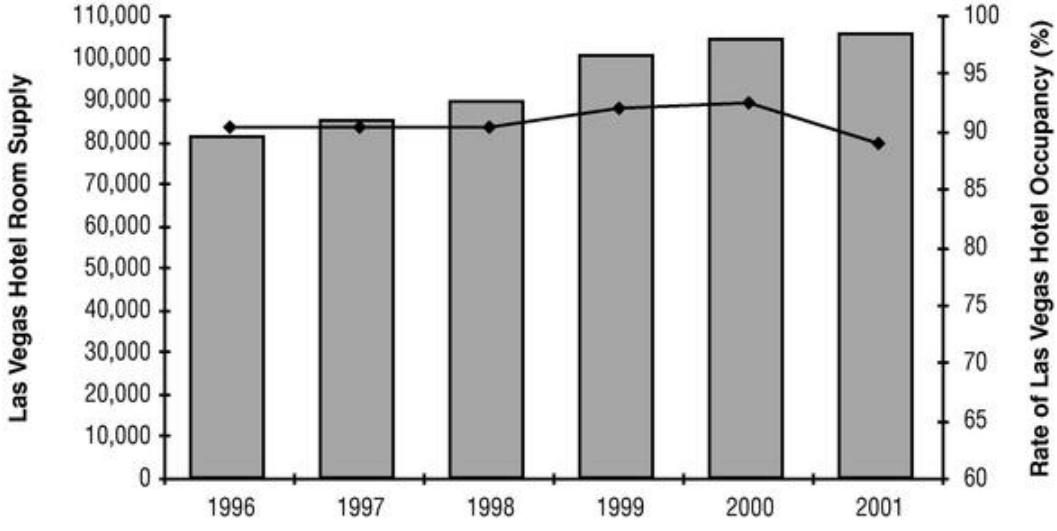
Gaming Market and Competition

Las Vegas Market

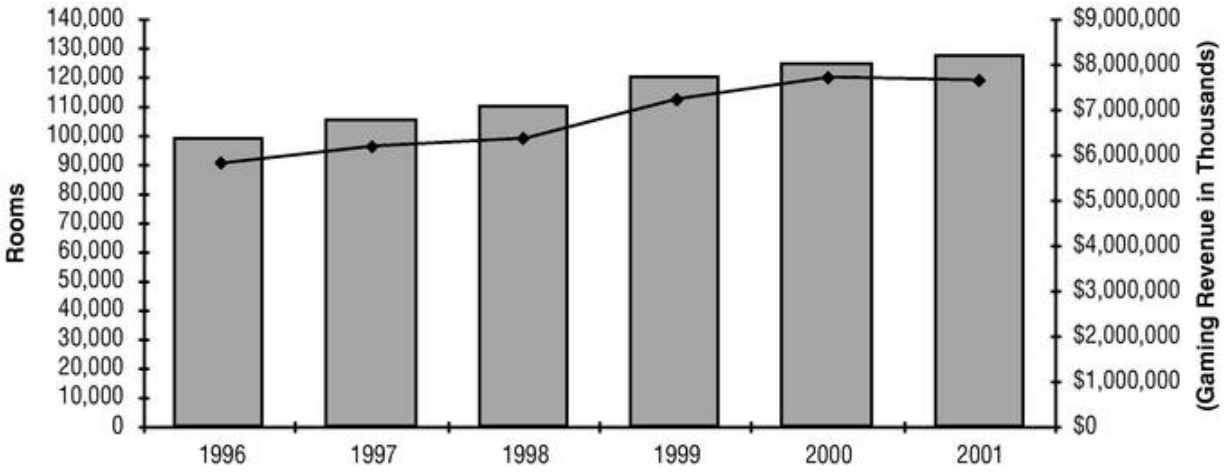
Overview. Las Vegas is one of the fastest growing leisure, lodging and entertainment markets in the country. Las Vegas hotel occupancy rates are among the highest of any major market in the United States. According to the Las Vegas Convention and Visitors Authority, the number of visitors traveling to Las Vegas has continued to increase at a steady and significant rate. The number of visitors increased from approximately 29.6 million in 1996 to approximately 35.0 million visitors in 2001, a compound annual growth rate of 3.3%. Aggregate expenditures by these visitors increased at a compound annual growth rate of 7.5%, from approximately $22.5 billion in 1996 to approximately $31.6 billion in 2001. The number of residents in Clark County, the greater Las Vegas area, has increased from 1,115,940 residents in 1996 to 1,425,723 residents in 2000, a compound annual growth rate of 6.6%.

Expanding Hotel and Gaming Market. Las Vegas has one of the strongest and most resilient hotel markets in the country and, according to the American Gaming Association, has the largest casino gaming revenue in the United States. The number of hotel and motel rooms in Las Vegas has increased by 27.8% from 99,072 in 1996 to 126,610 in 2001. Major properties on the Las Vegas Strip opening over this time period include Bellagio, Mandalay Bay Resort & Casino, New York-New York Hotel and Casino, Paris Las Vegas, Aladdin Resort & Casino and The Venetian. In addition, a number of existing properties on the Las Vegas Strip embarked on expansions during this period including MGM Grand Hotel and Casino, Luxor Hotel and Casino, Circus Circus Hotel, Casino and Theme Park, Mandalay Bay Resort & Casino and Caesars Palace. Despite this significant increase in the supply of rooms in Las Vegas,

hotel occupancy rates exceeded on average 90.6% for the years 1990 to 1999, averaged 92.5% in 2000 and 88.9% in 2001.



According to the Las Vegas Convention and Visitors Authority, Clark County gross gaming revenue has increased by 31%, from approximately $5.8 billion in 1996 to approximately $7.6 billion in 2001. As a result of the increased popularity of gaming, Las Vegas has sought to increase its popularity as an overall vacation resort destination. We believe that the growth in the Las Vegas market has been enhanced as a result of a dedicated program by both the Las Vegas Convention and Visitors Authority and major Las Vegas hotels to promote Las Vegas as a major vacation and convention site and the increased capacity of McCarran International Airport.



Growth of Las Vegas Retail Sector and Non-Gaming Revenue Expenditures. The Las Vegas market continues to evolve from its historical gaming focus to broader entertainment and leisure offerings. In addition to the traditional attractiveness of gaming, the market is continuing to expand to include retail, fine dining, sporting activities, major concerts and other entertainment facilities. This diversification has contributed to the growth of the market and broadened the universe of individuals who would consider Las Vegas as a vacation

destination. The more diversified entertainment and leisure offerings present significant growth opportunities. In particular, the newer, large theme-destination resorts have been designed to capitalize on this development by providing better quality hotel rooms at higher rates and by providing expanded shopping, dining and entertainment opportunities to their patrons, in addition to gaming.

Las Vegas as a Convention Center Attraction. According to Tradeshow Week 200, an annual publication that analyzes the 200 largest trade shows in the United States, Las Vegas was the most popular trade show destination in the United States with a 28.4% market share of the Tradeshow Week 200 shows in terms of net square footage and one of the most popular convention destinations in the United States in 2001. In 1996, approximately 3.3 million persons attended conventions in Las Vegas, providing approximately $3.9 billion in non-gaming trade show and convention revenue. By 2001, the number of convention attendees increased to more than 4 million, providing approximately $4.8 billion in non-gaming and trade show convention revenue.

Trade shows are held for the purpose of getting sellers and buyers of products or services together in order to conduct business. Trade shows differ from conventions in that trade shows typically require substantial amounts of space for exhibition purposes and participant circulation. Conventions generally are gatherings of companies or groups that require less space for breakout meetings and general meetings of the overall group. Las Vegas offers trade shows and conventions a unique infrastructure for handling the world's largest shows. This includes a concentration of approximately 72,000 hotel rooms located on the Las Vegas Strip, two convention centers—the Las Vegas Convention Center and the Sands Expo and Convention Center—with a total of over 4 million square feet of convention and exhibition space, convenient air service from major cities throughout the United States and other countries and significant entertainment attractions. In addition to the Sands Expo and Convention Center and the Las Vegas Convention Center, the MGM Grand Hotel and Casino has constructed a conference and meeting facility of approximately 300,000 gross square feet. The Mirage has recently added 90,000 gross square feet of meeting space, and Mandalay Bay Resort & Casino has begun construction of an approximately 1.8 million square foot convention center with an estimated completion date of early 2003. We believe that Las Vegas will continue to evolve as one of the country's preferred trade show and convention destinations.

Statistics on the Las Vegas Gaming Industry. The following table sets forth certain information derived from published reports of the Las Vegas Convention and Visitors Authority and the Nevada State Gaming Control Board concerning Las Vegas Strip gaming revenue and visitor volume and hotel data for the years 1996 to 2001. As shown in the table, the Las Vegas market has achieved significant growth in visitor volume and tourist revenue.

Historical Data for Las Vegas Gaming Industry(1)

	1996	1997	1998	1999	2000	2001
Las Vegas Visitor Volume	29,636,631	30,464,635	30,605,128	33,809,134	35,849,691	35,017,317
Percentage Change	2.2%	2.8%	0.5%	10.5%	6.0%	(2.3)%
Total Visitor Expenditures(2)	$ 22,533,258	$ 24,952,189	$ 24,577,469	$ 28,695,178	$ 31,462,337	$ 31,555,924
Percentage Change	8.9%	10.7%	(1.5)%	16.8%	9.6%	0.3%
Las Vegas Strip Gaming Revenue(2)	$ 3,579,269	$ 3,809,373	$ 3,812,630	$ 4,488,657	$ 4,805,059	4,703,692
Percentage Change	—	6.43%	0.09%	17.7%	7.0%	(2.1)%
Las Vegas Convention Attendance	3,305,507	3,519,424	3,301,705	3,772,726	3,853,363	4,049,095
Percentage Change	13.0%	6.5%	(6.2)%	14.3%	2.1%	5.1%
Las Vegas Hotel Occupancy Rate	93.4%	90.3%	90.3%	92.1%	92.5%	88.9%

Las Vegas Hotel/Motel Room Supply	99,072	105,347	109,365	120,294	124,270	126,610
Percentage Change	10.0%	6.3%	3.8%	10.0%	3.3%	1.9%

(1) Sources: Las Vegas Convention and Visitors Authority and Nevada State Gaming Control Board for the fiscal years ended December 31.

(2) Dollars in thousands.

Competition

Hotel/Casino Competition. The casino/hotel industry is highly competitive. Le Rêve, which will be located on the Las Vegas Strip, will compete with other high-quality resorts and hotel casinos in Las Vegas, including those located on the Las Vegas Strip, on the basis of overall atmosphere, range of amenities, level of service, price, location, entertainment offered, theme and size. Le Rêve will also compete with other hotels in downtown Las Vegas, as well as a large number of hotels and motels in and near Las Vegas.

In June 2003, The Venetian expects to complete a 1,000-room hotel tower on top of the resort's existing parking garage. Also, Mandalay Bay Resort & Casino has announced that it expects to begin construction of a 1,122-room, all-suite tower connected to the current hotel casino resort in September 2002, with an expected opening date of October 2003. Other than the expansions of The Venetian and Mandalay Bay Resort & Casino, we are not aware of any significant additions of hotel rooms to major hotel casino resort properties in Las Vegas or any developments of new major hotel casino resort properties in Las Vegas in the near future. Many of the competing properties, such as the Bellagio, Caesars Palace, Luxor Hotel and Casino, Mandalay Bay Resort & Casino, the MGM Grand Hotel and Casino, The Mirage, Monte Carlo Hotel and Casino, New York-New York Hotel and Casino, Paris Las Vegas, Rio All-Suite Hotel & Casino, Treasure Island at The Mirage and The Venetian, have themes and attractions which draw a significant number of visitors and will directly compete with our operations. Some of these facilities are operated by companies that have more than one operating facility and may have greater name recognition and financial and marketing resources than us and market to the same target demographic group as we will.

We will seek to differentiate Le Rêve from other major Las Vegas resorts by concentrating on our fundamental elements of design, atmosphere, personal service and level of luxury.

Las Vegas casinos, including our own, also compete, to some extent, with other hotel/casino facilities in Nevada and in Atlantic City, with riverboat gaming facilities in other states, with hotel/casino facilities elsewhere in the world, with state lotteries and with Internet gaming. In addition, certain states recently have legalized, and others may or are likely to legalize, casino gaming in specific areas. Passage of the Tribal Government Gaming and

Economic Self-Sufficiency Act in 1988 has led to rapid increases in Native American gaming operations. Also, in March 2000, California voters approved an amendment to the California Constitution, allowing federally recognized Native American tribes to conduct and operate slot machines, lottery games and banked and percentage card games on Native American land in California and in accordance with federal law. These gambling activities are permitted if (1) the governor of California and a Native American tribe reach an agreement on a compact, (2) the California legislature ratifies the compact and (3) the federal government approves the compact. The governor, the legislature and the federal government have approved many compacts. As a result, casino-style gaming is now legal on many tribal lands in California. The proliferation of Native American gaming in California could have a negative impact on our operations. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization of casino gaming in or near metropolitan areas, such as New York, Los Angeles, San Francisco and Boston, from which we intend to attract customers, could have a substantial negative effect on our business.

Our casino will also compete, to some extent, with other forms of gaming on both a local and national level, including state-sponsored lotteries, on- and off-track wagering and card parlors. The expansion of legalized gaming to new jurisdictions throughout the United States will also increase competition we face and will continue to do so in the future. Additionally, if gaming is legalized in jurisdictions near our property or our target markets where it currently is not permitted, we will face additional competition. See "Risk Factors—General Risks Associated with Our Business—Our casino, hotel, convention, retail and other facilities face intense competition."

Retail Competition. Le Rêve's retail stores will operate in a highly competitive environment. Le Rêve's retail stores will compete with other retail stores located in other Las Vegas hotel casino resorts and shopping districts. Among these Las Vegas shopping locations, Le Rêve will face significant competition from the retail stores at Bellagio, the Forum Shops at Caesars Palace, The Grand Canal Shoppes at The Venetian and Desert Passage at Aladdin Resort & Casino. In particular, Le Rêve's retail stores will face competition from the premium retail stores of the Fashion Show Mall, which is owned by The Rouse Company, a publicly traded company. The Fashion Show Mall, which is situated across the Las Vegas Strip from Le Rêve, is currently undergoing an extensive remodeling and expansion program, reportedly increasing in size from approximately 773,000 square feet to nearly 2 million square feet. Beginning in November 2002, the Fashion Show Mall is expected to contain an approximately 180,000 square foot Nordstrom and a flagship store of Bloomingdale's Home & Furniture. The expansion of the Fashion Show Mall is expected to be completed in October 2003 with a new Lord & Taylor and is expected to include a total of approximately 300 shops. In addition, Le Rêve's retail stores will compete with outlet shopping areas located on the way to Las Vegas from Los Angeles and other places, which tend to offer merchandise at discounted prices.

Our retail stores will compete on the basis of, among other things, the location of our stores, the breadth, quality, style, and availability of merchandise, the level of customer service offered and merchandise price. We will also compete with other retail properties for retail businesses on the basis of the rent charged and location.

We believe that our retail operations will generate approximately 5% of our total revenue. However, we will face significant competition in this market area. Any increase in our competitors' market share for retail customers in Las Vegas could negatively impact our operations in a significant manner. See "Risk Factors —General Risks Associated with Our Business—Our casino, hotel, convention, retail and other facilities face intense competition."

Construction Schedule and Budget

We have scheduled ground breaking for Le Rêve to occur in September 2002, with an opening to the general public scheduled for March 2005.

Wynn Design & Development, a wholly owned subsidiary of Wynn Resorts, is responsible for the design and architecture of Le Rêve (except for the showroom) and for managing construction costs and risks associated with the Le Rêve project. Nevada law requires that a firm licensed as a professional architectural organization certify architectural plans. These architectural services for the Le Rêve project will be provided by the firm of Butler/Ashworth Architects, Ltd., LLC. The principals of the Butler/Ashworth firm are DeRuyter O. Butler and Glen Ashworth, both of whom are employees of Wynn Design & Development. Mr. Butler is Executive Vice President of Wynn Design & Development. Wynn Design & Development is the only client of the Butler/Ashworth firm and pays the salaries and benefits of Messrs. Butler and Ashworth. Neither we nor Mr. Wynn has an ownership interest in Butler/Ashworth.

We expect the total development cost of Le Rêve to be approximately $2.4 billion, including the budgeted design and construction costs, cost of the land, capitalized interest, pre-opening expenses and all financing fees. The required cash interest payments and commitment fees on our credit facilities, our contemplated FF&E facility, the second mortgage notes and any other indebtedness and obligations of ours which will be due before four months following the estimated commencement date of operations of Le Rêve have been included in our estimate of the total development cost.

Of the estimated $2.4 billion total development cost for Le Rêve, the design and construction costs are budgeted to be approximately $1.375 billion, including the cost of constructing the golf course and principal parking garage, but excluding costs such as pre-opening costs, entertainment production costs, site acquisition costs, construction period interest, financing fees and certain furniture, fixtures and equipment, such as slot machines, computer equipment and kitchen and dining supplies. In an effort to manage our construction risk, we have entered into a guaranteed maximum price construction contract with Marnell Corrao covering approximately $902 million of the budgeted $1.375 billion design and construction cost, subject to increases based on scope changes and other exceptions, to construct Le Rêve.

We have entered into a guaranteed maximum price construction contract with Marnell Corrao covering approximately $902 million of the budgeted $1.375 billion design and construction costs, subject to increases based on, among other items, scope changes, to construct Le Rêve. Approximately $473 million of the $1.375 billion budgeted design and construction cost expenditures are not part of the guaranteed maximum price contract, such as:

- owner-managed interior design and related furniture, fixtures and equipment, construction of restaurant and retail spaces, including tenant allowances, signage and electronic systems, site work and exterior features at a budgeted cost of approximately $295.4 million;
- construction of the new golf course at a budgeted cost of approximately $21.5 million; we expect to solicit competitive bids in summer 2002 for construction of the new golf course and to award the construction contract in the third quarter of 2002;
- construction of the principal parking garage at a budgeted cost of approximately $11.5 million;
- estimated design and engineering professional fees of approximately $64.2 million;

- costs of obtaining required governmental approvals and permits and utility service connection fees of approximately $13.4 million;
- costs of miscellaneous capital projects, including demolition and mock-up costs, of approximately $23.6 million;
- utilities and security costs during construction of approximately $6.3 million;
- estimated insurance costs of approximately $12.6 million for builder's risk insurance, fees and reserves under the owner-controlled insurance program, umbrella and excess liability insurance and design professional liability insurance during the construction period; and
- contingency of approximately $24.5 million of the total owner's contingency of $32.1 million.

We are responsible for these elements of the budget, including any cost overruns with respect to these elements. Of this remaining $473 million of budgeted design and construction costs, we have spent approximately 6.4% to date. We have confirmed pricing with respect to another 35.2% so that we have spent or confirmed pricing for a total of approximately 41.6% of these remaining budgeted costs.

We have entered into a design/build contract with Bomel for the design and construction of the principal parking garage for a lump sum of $9.85 million, subject to certain exceptions, including any changes in the scope of work, force majeure or owner delays. The construction contract with Bomel provides that design work will commence in June 2002. We expect that construction will commence in September 2002. We expect to solicit competitive bids in summer 2002 for the construction of the golf course and to award the contract in the third quarter of 2002. We expect that the newly constructed golf course will be available for play when Le Rêve opens.

We expect to lease approximately one-half of the retail shops at Le Rêve to third parties and intend to provide some of our retail tenants an allowance for improvements as part of the lease arrangements. These construction costs and allowances are included in our design and construction budget for Le Rêve. Design and/or construction costs in excess of an allowance are intended to be the responsibility of the particular retail tenant. Nevertheless, if we are unable to successfully negotiate leases consistent within our design and construction budget, we may have to fund or construct, at our cost, additional improvements in connection with the leases relating to the space.

We intend to operate most, if not all, of the restaurants at Le Rêve. We plan to construct the improvements for all of the restaurants, whether managed by us or by third parties, and the costs of those improvements are included in our design and construction budget.

We believe that the overall design and construction budget of $1.375 billion is reasonable. In addition to the guaranteed maximum price provisions of the construction contract, we plan to implement specific mechanisms that are intended to reduce the risk of construction cost overruns and delays, including:

- a $32.1 million owner's contingency that we may use, subject to conditions that our lenders may impose, to cover owner-created delays and owner-originated changes in the scope of the work;
-

a liquidated damages provision requiring Marnell Corrao to pay us $300,000 for each day the completion of construction is delayed, following a five-day grace period and

subject to force majeure and other permitted extensions, up to a maximum amount of $9 million;

- a $150 million contractor performance and payment bond securing Marnell Corrao's obligations under the construction contract;
- a guaranty by Marnell Corrao's parent company, Austi, of Marnell Corrao's full performance under the construction contract until final payment under that contract;
- a $50 million completion guaranty in favor of the lenders under our credit facilities and our second mortgage note holders by our special purpose subsidiary, which guaranty will be secured by $50 million of the proceeds of this offering deposited in a collateral account and pledged to the lenders under our credit facilities and second mortgage note holders, to be applied to the costs of the project as the lenders under our credit facilities determine in accordance with the disbursement agreement;
- a separate liquidity reserve account to be held by Wynn Las Vegas into which we will deposit $30 million of the net proceeds of this offering pledged to the lenders under our credit facilities and second mortgage note holders to secure Wynn Las Vegas' obligation to complete the project and to be applied to the costs of the project, as the lenders under our credit facilities determine in accordance with the disbursement agreement; and
- budgeted interest and commitment fees on our debt facilities for four months after our scheduled opening date.

Despite these protections, design and construction costs may be significantly higher than expected. In addition, the completion guaranty funds will not be available to us until Le Rêve opens. The liquidity reserve funds will not be available to us, other than to meet our working capital needs, until we have met prescribed cash flow tests for a full fiscal year after the opening of Le Rêve. Furthermore, if we do not complete construction of Le Rêve by August 31, 2005, we will be in default under our credit facilities, and the holders of our indebtedness will have the right to accelerate our indebtedness and exercise other rights and remedies against us. See "Risk Factors—Risks Related to Our Substantial Indebtedness—We are highly leveraged and future cash flow may not be sufficient to meet our obligations, and we might have difficulty obtaining more financing." We do not expect to be able to obtain insurance for delayed opening of Le Rêve, loss of use of the project or loss due to force majeure events. See "Risk Factors—Risks Associated with Our Construction."

Design and Construction Team

Wynn Resorts' subsidiary, Wynn Design & Development, together with Mr. Wynn, is designing Le Rêve. Wynn Design & Development, which will supervise construction of Le Rêve, is comprised of a highly qualified team of specialists with an impressive track record in designing, constructing and completing major hotel casino resorts. The Wynn Design & Development team includes:

- *Kenneth R. Wynn, President*. Mr. Kenneth R. Wynn will be supervising the construction, architectural and interior design and purchasing for Le Rêve. Mr. Kenneth R. Wynn previously served as President of Atlandia Design & Furnishings, Inc., then a wholly owned subsidiary of Mirage Resorts, where he directly supervised the construction, architecture, interior design and purchasing departments, as well as outside contractors and consultants, for all of Mirage Resorts' new construction and remodel projects, including Bellagio, The Mirage, Treasure Island at The Mirage and Golden Nugget—Las Vegas. Mr. Kenneth R. Wynn is the brother of Mr. Stephen A. Wynn.

- *W. Todd Nisbet, Executive Vice President—Project Director.* Mr. Nisbet will be supervising the construction of Le Rêve. Mr. Nisbet has over 15 years of experience in the construction industry through his employment by Marnell Corrao, where he had direct supervisory capacity over the construction of Bellagio, Treasure Island at The Mirage, projects at The Mirage, such as the expansion of the convention center, the volcano upgrade and the high limit slot area, and the expansion of the north casino at Caesars Palace.
- *DeRuyter O. Butler, Executive Vice President—Architecture.* Mr. Butler has been employed by Atlandia Design & Furnishings or Wynn Design & Development for nearly 20 years. Mr. Butler directly supervised the architectural design of major hotel casino resorts such as Bellagio, The Mirage, Treasure Island at The Mirage and the Golden Nugget—Las Vegas.
- *Roger P. Thomas, Executive Vice President—Design.* Mr. Thomas, who served as the Vice President—Design for Atlandia Design & Furnishings for over 15 years, was responsible for the interior design of The Mirage, including the standard rooms, suites and villas, the spa and salon, the Siegfried & Roy and Danny Gans showrooms and the expansion of the convention center. In addition, Mr. Thomas supervised the interior design of Bellagio, Treasure Island at The Mirage and the Golden Nugget—Las Vegas.
- *Janellen Sachs Radoff, Vice President—Design.* Ms. Radoff held the position of Executive Designer at Atlandia Design & Furnishings for almost 15 years and has over 25 years of experience in interior design. Ms. Radoff worked with Mr. Thomas to create the interior design of major hotel casino resorts projects such as Bellagio, The Mirage and the Golden Nugget—Las Vegas.

Construction Contracts

The following discussion summarizes the material terms of our construction contracts. These summaries do not purport to be complete and are qualified in their entirety by reference to the contracts themselves.

Construction of the Hotel/Casino

Overview. We have entered into a construction agreement with Marnell Corrao, the contractor, for construction services for a substantial portion of the construction, but not design, of Le Rêve, excluding the principal parking garage and the golf course construction, for a guaranteed maximum price. The

guaranteed maximum price is approximately $902 million (subject to various contingent adjustments). The guaranteed maximum price includes:

- a fixed lump sum contractor's fee in the amount of $30 million;
- costs necessarily incurred by Marnell Corrao in the performance of its obligations under the construction contract, including the cost of payment and performance bonds for Marnell Corrao and subcontractors required by the construction contract; and
- an approximately $7.6 million owner-controlled contingency to cover, among other items, owner-created delays and owner-originated changes in the scope of work.

The guaranteed date of substantial completion is 910 calendar days from the date we direct Marnell Corrao by written notice to commence construction.

Although we have determined the overall scope and general design of Le Rêve, not all of the construction elements that are the subject of the guaranteed maximum price contract

have been finalized. The approximately $902 million maximum price includes construction components totaling approximately $515.5 million for which detailed plans have not yet been finalized. The guaranteed maximum price for these components is based on master concept plans and agreed upon design and other premises and assumptions for the detailed plans to be created for the remaining components. If the plans for these components do not substantially conform to the premises and assumptions described in the construction contract, or if we request change orders with respect to these components or any component for which there are final plans or defects or deficiencies in the architectural plans or concealed conditions, we will be responsible for the excess costs. For example, if the initial drawings, when finalized, are inconsistent with the premises and assumptions, we will be responsible for the increase, if any, in the cost to construct the work covered by those drawings over the previously agreed upon amounts designated for such work in the guaranteed maximum price, even if the drawings are redesigned to be consistent with the premises and assumptions. The premises and assumptions reflect general concepts and techniques pursuant to which the contractor will construct Le Rêve. However, the premises and assumptions may not be sufficiently specific so as to determine, as between the contractor and us, who is responsible for cost overruns in specific situations.

As of the date of this prospectus, and with regard to a portion of the construction budget covered by the Marnell Corrao construction contract:

- we have prepared and received bids on final construction drawings and specifications for approximately 3 million square feet of high rise hotel, convention center, central plant, meeting rooms and warehouse space, which represents approximately $349 million of the construction elements covered by the construction contract;
- approximately $515.5 million represents components, for which final plans have not yet been completed; and
- approximately $32.1 million of the approximately $515.5 million of construction components consists of allowances for additional items of the construction work that are in the earliest concept stages, such as construction of the "mountain." If the actual cost of these items exceeds the allowances, we will be responsible for these excess amounts.

Drawings for the interior work on the project have not been finished. We are responsible for all costs and cost overruns associated with the interior work.

There are also certain permit and similar fees and costs which are not Marnell Corrao's responsibility and are not a part of the guaranteed maximum price, but are our responsibility.

The construction contract calls for the cost of the work provided by Marnell Corrao to be at the lowest reasonably available prices obtainable by Marnell Corrao's best efforts, unless we have given prior written consent to incur higher expenses.

If we reasonably believe at any time, based on the progress of the work and the cost of the work, that the work cannot be completed for the guaranteed maximum price, we have the right after certain notice periods to require Marnell Corrao to provide us with satisfactory evidence of funds available to Marnell Corrao to pay any anticipated overages.

Due to the lack of final plans for substantial portions of the project, the construction contract does not require Marnell Corrao to adhere to specific cost limits on a line item basis. Rather, it only obligates Marnell Corrao to complete the construction within an overall guaranteed maximum price subject to certain general balancing and other requirements. Therefore, subject to the general balancing requirements of the construction contract, there is

a risk that the funds earmarked for the guaranteed maximum price could be exhausted before substantial completion of the project should Marnell Corrao spend greater amounts on certain line items in the earlier stages of construction. In addition, the disbursement agreement and the credit facilities will contain balancing provisions requiring us to demonstrate, as a condition to every release or drawdown of funds, that we have sufficient funds available to cover all remaining construction costs, plus required contingency, in accordance with our construction budget. Accordingly, if Marnell Corrao spends greater amounts than anticipated in respect of any component of the work, we may be denied further access to the proceeds of the second mortgage notes and under our credit facilities.

We will continue to evaluate the project design in relation to its construction schedule and budget and the demands of the Las Vegas tourist and gaming market. Accordingly, the design of individual elements of Le Rêve may be refined from the descriptions contained in this prospectus.

Potential Increases in the Guaranteed Maximum Price. The construction contract with Marnell Corrao provides that the guaranteed maximum price will be appropriately increased, and the deadline for completion of construction will be appropriately adjusted, on account of, among other circumstances:

- changes in the design documents prepared by the architect or deficiencies in the design documents;
- changes requested or directed by us in the scope of the work to be performed pursuant to the construction contract;
- changes in legal requirements;
- natural disasters, unavoidable casualties, industry-wide labor disputes affecting the general Las Vegas area and not limited to the project, and other force majeure events that are unforeseeable and beyond the reasonable control of Marnell Corrao; and
- delays caused by us.

We will commence construction of Le Rêve before all plans and specifications will be completed. Delays in completing the remaining drawings and specifications could cause delays in the substantial completion of the work and, under specific circumstances, could defer the contractor's obligation to deliver the completed project by the scheduled completion date.

Cost overruns could cause us to be out of "balance" under our debt facilities and, consequently, unable to obtain funds from the second mortgage note proceeds secured account or to draw down under our credit facilities. If we cannot obtain these funds, we will not be able to open Le Rêve to the general public on schedule or at all.

When we finalize plans or specifications in the future, we may discover that we need to obtain additional funding, which may not be available on satisfactory terms or at all, or we may choose to reduce the scope of work and design components to reduce costs of the work.

Competitive Bids. Unless we specify otherwise, subcontractors will be selected after a bidding process that includes, to the extent practicable, at least three bidders from a list of bidders provided by Marnell Corrao. Marnell Corrao will submit the various bids received from prospective subcontractors, all information available to Marnell Corrao with respect to the bids and prospective subcontractors and Marnell Corrao's recommendation of the prospective subcontractor for the contract. We, with Marnell Corrao's assistance, will select each subcontractor based on this information. If we select a subcontractor other than one

recommended by Marnell Corrao, and there is a difference in the bids of the subcontractor we select above stated thresholds, the guaranteed maximum price may be increased.

Substantial Completion. Marnell Corrao is responsible for achieving "substantial completion" of the work by a guaranteed date of substantial completion. Substantial completion is defined in the construction contract as the stage in the progress of the development of Le Rêve when it is sufficiently complete, including the receipt of necessary permits, licenses and approvals, so that all aspects of Le Rêve covered by the construction contract can be open to the general public. As mentioned earlier, under the construction contract, the guaranteed date of substantial completion is 910 calendar days from the date we direct Marnell Corrao by written notice to commence construction. This period is referred to in the construction contract as the "contract time," and may only be adjusted in accordance with the construction contract. The contract time may be extended, among other reasons, due to force majeure events as noted below, and changes by us in the scope of the work.

Plans for a substantial portion of the approximately $902 million guaranteed maximum price construction budget have not been finalized. Delays in completing the remaining drawings and specifications could cause delays in the substantial completion of the work and, under certain circumstances, could defer Marnell Corrao's obligation to deliver the completed project by the scheduled completion date.

Parent Guaranty. Austi, the parent company of Marnell Corrao, has agreed to provide a continuing guaranty by which Austi guarantees Marnell Corrao's full performance and payment obligations under the construction contract until final payment under that contract. Austi is a private company controlled by the Anthony A. Marnell II family.

Force Majeure and Owner Delay. Any delays in performance by Marnell Corrao arising from a force majeure occurrence, which includes industry-wide labor disputes affecting the general Las Vegas area and not limited to the project, fire, unavoidable casualties, adverse weather conditions not reasonably anticipated, or other causes which, based on Marnell Corrao's extensive experience in constructing projects of similar scope and complexity in the same location, are unforeseeable and beyond Marnell Corrao's reasonable control, and any delays caused by us or our agents, consultants or separate contractors, may, subject to certain limitations, allow Marnell Corrao an extension of the contract time.

Payment and Performance Bond. Marnell Corrao will obtain a performance and payment bond in the amount of $150 million, covering its performance of the construction contract and payment of obligations thereunder. The performance and payment bond will be issued by a bonding company with an A.M. Best Co. rating of A XV or better, and will name us and our lenders and agents relating to the lenders under our credit facilities and the trustee on behalf of the second mortgage note holders as obligees and beneficiaries. After it is issued, the performance and payment bond may not be increased or decreased unless we approve in advance. Certain of the subcontractors performing work for Marnell Corrao on the project will also be bonded.

Early or Late Completion. If Marnell Corrao achieves substantial completion of the work before the guaranteed date of substantial completion without increasing the cost of the work to achieve such early completion, we will pay Marnell Corrao an early completion bonus equal to $50,000 per day for each day before the guaranteed date of substantial completion that the work was substantially completed. The amount of the early completion bonus will not exceed $1 million.

If Marnell Corrao fails to achieve substantial completion of the work within the contract time, Marnell Corrao will pay us, as liquidated damages, $300,000 per day beginning on the

sixth day after the guaranteed substantial completion date and continuing every day thereafter until substantial completion of the work is achieved or the total amount of liquidated damages equals $9 million. Marnell Corrao's liability to us for damages arising solely from delays caused by Marnell Corrao or for which Marnell Corrao is responsible, will not exceed $9 million as provided in the construction contract. We cannot assure you that construction will be completed on schedule and, if completion of the construction is delayed beyond the grace period, our actual damages may exceed $9 million, or 30 days of delay.

Payment. Marnell Corrao must make an itemized application for payment based on an approved schedule of values. Payment of the application is subject to approval by us and our lenders, based on the conditions of the construction contract. Subject to certain limitations imposed by the Nevada Revised Statutes, the construction contract allows us to withhold amounts from any payments due to Marnell Corrao which we determine to be necessary to protect us against liens until the liens are bonded or otherwise discharged. See "Risk Factors—Risks Associated with Our Construction—Development costs of Le Rêve are estimates only and actual development costs may be higher than expected." We are entitled to retain 10% of all monies due to subcontractors under the monthly applications for payment until the work is complete, though there is no retainage on payments to Marnell Corrao or vendors. However, after 50% of the scope of the work is complete, we may elect to reduce the level of retention for selected subcontractors under certain conditions and subject to the approval of our lenders.

Warranties and Guarantees. Marnell Corrao's general construction warranty and guarantee extends for one year after substantial completion of the work. Marnell Corrao guarantees that its construction workmanship will be first class in quality, free from all faults and defects, and that the work will comply with the construction contract requirements and all applicable laws, codes and regulations. Marnell Corrao also guarantees that all materials, equipment, mechanical devices and supplies incorporated into the work will be new and will strictly meet the specifications and requirements of the construction contract.

Furthermore, Marnell Corrao warrants that Marnell Corrao has substantial experience in performing major projects with scopes of work similar to Le Rêve, and, where required by law, is licensed to perform the work. Marnell Corrao will assign to us all subcontractor warranties and/or guarantees and provide the benefit of all vendor's warranties. Marnell Corrao also agrees to assist us in prosecuting the enforcement of all subcontractor and vendor warranties. Marnell Corrao's warranty excludes damages or defects caused by ordinary wear and tear, insufficient maintenance, improper operation or improper use by us.

Insurance. Through the owner-controlled insurance program, we will pay for and maintain builder's risk and "wrap-up" liability insurance upon Marnell Corrao's and all subcontractors' work at the site. This insurance includes:

- builder's risk insurance;
- on-site workers compensation and employers liability insurance;
- commercial general liability insurance; and
- umbrella and excess liability insurance.

The owner-controlled insurance program will be for the benefit of us, Marnell Corrao and its subcontractors, unless specifically excluded, who have on-site employees. It is anticipated that the lenders under our credit facilities and the trustee on behalf of the second mortgage note holders will be required to be named as additional insureds under the insurance required to be carried under the construction contract. This coverage applies only to work performed

under the construction contract at the site. Participation in the owner-controlled insurance program will be mandatory. Marnell Corrao is required to, and is required to cause all of the subcontractors to, complete all forms, submit the information required and comply with the terms of the owner-controlled insurance program manual. No exceptions can be made to this requirement without our prior approval.

Additional Insurance. Additionally, Marnell Corrao is required to, and is required to cause the subcontractors to, obtain and maintain the following, which are not included in the owner-controlled insurance program:

- automobile liability insurance, with limits of not less than $1 million combined single limit for bodily injury, death and property damage per occurrence; and
- off-site activities.

Also, included as a cost of the work within the guaranteed maximum price is our obligation to reimburse Marnell Corrao for certain additional insurance maintained by Marnell Corrao but not required by the construction contract.

Ineligible Parties and Termination of the Owner-Controlled Insurance Program. We have the right to terminate or to modify the owner-controlled insurance program upon 30 days advance written notice to Marnell Corrao and each subcontractor covered by the owner-controlled insurance program. If Marnell Corrao or any subcontractor fails to, or is ineligible to, enroll in the owner-controlled insurance program or the owner-controlled insurance program is terminated, Marnell Corrao and the subcontractors must provide, pay for and maintain the following types of coverage in accordance with the requirements of the construction contract, including as to coverage amounts, and in addition to the additional insurance noted above:

- commercial general liability insurance;
- workers' compensation and employer's liability insurance; and
- umbrella and excess liability insurance.

For all of these policies, Marnell Corrao and all subcontractors must obtain a waiver of subrogation, where allowed by law, against us and all other named insureds and their agents and employees.

Indemnification. Marnell Corrao has agreed to indemnify us, our affiliates and our lenders (including trustees and agents relating to the lenders under our credit facilities and the trustee on behalf of the second mortgage note holders) from all claims, costs, expenses, damages, liabilities and losses, including the defense of lawsuits or threatened lawsuits, suffered by or threatened against us and/or our affiliates and lenders (including trustees and agents related to our

lenders and our financing and the trustee on behalf of the second mortgage note holders) that relate to or arise out of performance of the work or any act or omission of Marnell Corrao or any subcontractor or vendor and that are imposed by law or relate to, among other things:

- personal injury;
- death;
- property damage;
- violations of or failure to comply with applicable laws;
- variations from the construction contract;

- mechanics' liens relating to Marnell Corrao's work; or
- any breach or alleged breach of Marnell Corrao's representations, obligations, covenants or agreements in the construction contract.

In the event of contributory negligence by us and/or any indemnitee, Marnell Corrao will only be liable for payment in direct proportion to Marnell Corrao's percentage of fault, if any. Further, Marnell Corrao's indemnification obligation does not apply to a claim to the extent of any insurance proceeds actually received by the indemnitee or to a claim related to hazardous materials, subject to certain exceptions, and is limited as to damages for delay in completion of construction.

Also, under the construction contract, Wynn Las Vegas has agreed to indemnify Marnell Corrao and its affiliates from all claims, costs, expenses, damages, liabilities and losses, including the defense of lawsuits or threatened lawsuits, suffered by or threatened against Marnell Corrao and/or its affiliates that relate to or arise out of any act or omission by us and that are imposed by law or relate to:

- personal injury;
- death;
- property damage; or
- any breach or alleged breach of Wynn Las Vegas warranties, representations, obligations, covenants or agreements in the construction contract.

Certain liability limitations and releases in favor of the owner contained in the construction contract are also express limitations on the owner's indemnity obligations.

Termination of Construction Contract. Except as described below, we may cancel the construction contract or suspend, reduce, interrupt or delay, in whole or in part, the construction for our convenience at any time and under any circumstances by providing written notice to Marnell Corrao. If we cancel, suspend, reduce, interrupt or delay the construction contract, Marnell Corrao will do only the work necessary to preserve and protect the work already in progress and complete any work not cancelled, suspended, interrupted, delayed or reduced, and cancel all existing orders to vendors and subcontractors relating to terminated work. With respect to such cancellation, suspension, reduction, interruption or delay, the construction contract provides that we have no liability to Marnell Corrao or any subcontractor or vendor for, and neither Marnell Corrao nor any subcontractor or vendor may make any claim for, lost profit or overhead, and they have agreed to expressly limit their remedies in such event. However, our rights to terminate, suspend or delay the construction and the limitation on Marnell Corrao's remedies conflict with express provisions of the Nevada Revised Statutes and may not be enforceable. See "Risk Factors—Risks Associated with Our Construction—Development costs of Le Rêve are estimates only and actual development costs may be higher than expected."

Lenders. Marnell Corrao has agreed to cooperate with all lenders, trustees, intercreditor agents, administrative agents and disbursement agents whom we designate, and will, on request, execute and deliver documents and instruments reasonably requested by those persons, including an amendment to the construction contract, so long as the amendment does not materially or substantially alter the rights, duties or obligations of Marnell Corrao and the subcontractors under the construction contract. Representatives of our lenders and the designated trustees, intercreditor agents, administrative agents and disbursement agents will also have access to the work and site and are entitled to audit Marnell Corrao, subcontractors and vendors to the same extent as us. Material changes to the drawings,

specifications, contract time and guaranteed maximum price also may be subject to approval of our lenders.

Claims and Disputes. All claims relating to the construction contract initially must be made to us within 14 days after the claim arises. If we do not resolve the claim, the claim may be submitted to a court of competent jurisdiction in the state or federal courts in Las Vegas or Clark County, Nevada. Pending resolution of any claim, and subject to the Nevada Revised Statutes, Marnell Corrao will continue to perform construction so long as Marnell Corrao is paid for any amounts not in dispute. See "Risk Factors—Risks Associated with our Construction—Development costs of Le Rêve are estimates only and actual development costs may be higher than expected."

Construction of the Parking Garage

Wynn Las Vegas has entered into a design/build contract with Bomel for the design and construction of the principal parking garage for a lump sum of $9.85 million, subject to specified exceptions. The principal parking garage will consist of approximately 1,840 parking spaces and associated infrastructure. The construction contract with Bomel provides that design work will commence in June 2002. We expect that construction will commence in September 2002.

Bomel and its subcontractors will be covered by the owner-controlled insurance program to the same extent and subject to the same exceptions and requirements as Marnell Corrao and its subcontractors for the casino and hotel portion of Le Rêve. The obligations of Bomel will not be bonded.

The construction contract for the parking garage provides that the maximum cost to us for completion of Bomel's work on the garage will not exceed $9.85 million, subject to certain exceptions, including any changes in the scope of work, force majeure or owner delays. To complete the garage facility, we expect to perform additional work under our own direction, which is budgeted to cost an additional approximately $1.65 million.

Bomel's general construction warranty extends for one year, and up to five years with regard to some watertight aspects, after final completion of its work on the garage facility.

Construction of the Golf Course

We estimate that the cost to construct the golf course will be approximately $21.5 million. We expect to solicit bids in summer 2002 for the construction of the golf course and to award the contract in the third quarter of 2002. We cannot guarantee that our ultimate contract with a golf course contractor will contain provisions to protect us against cost overruns or delays associated with the golf course construction.

Water Show Entertainment Production Agreement

We have entered into an agreement with Calitri Services and Licensing Limited Liability Company under which Calitri will create, develop and produce the water show at the Le Rêve showroom. Under the agreement, Calitri is required to employ Franco Dragone as the principal creator of the production, and the concept of the production is subject to Mr. Wynn's approval. Under the agreement, as orally amended, we will pay Calitri a $4 million fee, $2 million of which has been paid, and fund parts of the development and production budgets. In addition, Calitri will receive 10% of the revenue and one-half of the profits of the production. Under the agreement, we and Calitri will have joint and equal ownership rights to the production and any related intellectual property rights. The initial term of the agreement is

ten years. However, if the production fails to satisfy certain revenue requirements, we may terminate the agreement prior to the end of its term. We also have an option to renew the agreement for an additional five-year term. We intend to enter into a written memorialization of this oral agreement prior to the completion of this offering. Upon the completion of this offering, we plan to grant Mr. Dragone an award of shares of restricted stock. The restricted stock will be subject to our repurchase right, which will lapse in June 2006.

Marketing

We believe that in operating some of the signature properties in Las Vegas, Mr. Wynn has developed a high degree of customer recognition and guest loyalty and therefore believe that Le Rêve will attract wealthy international and domestic gaming customers. We believe that Mr. Wynn's reputation will attract experienced, high-level international and domestic casino marketing executives. We also plan to utilize Mr. Wynn's network of longstanding relationships with representatives of high-roller and premium gaming players to attract these types of players to Le Rêve. Le Rêve plans to have marketing executives located in local offices in Tokyo, Hong Kong, Singapore, Taiwan, Europe, New York and southern California, as well as independent marketing representatives in major U.S. and foreign cities. We plan to develop a state-of-the-art guest loyalty program at Le Rêve to integrate in real-time, all gaming, hotel, food, beverage and retail revenue of a particular guest and compare it against incurred expenses to determine the profitability of that guest.

Seasonality

We do not consider our Las Vegas business to be particularly seasonal. However, we expect that our revenue and cash flow may be slightly reduced during the summer months due to the tendency of Las Vegas room rates to be lower at that time of the year.

Employees

We currently employ approximately 225 employees. We anticipate that when Le Rêve opens, we will employ approximately 7,000 employees in connection with the operation of our hotel casino resort. As a result, we will need to undertake a major recruiting and training program before the opening. However, we believe that we will be able to attract and retain a sufficient number of qualified individuals to operate the hotel and casino. We believe that we will be able to capitalize on Mr. Wynn's reputation and established relationships with former gaming, hotel and food and beverage employees in the Nevada community to supply the necessary work force to adequately operate Le Rêve's hotel casino resort. Under Mr. Wynn, Mirage Resorts was ranked as the fourth best company in the United States in quality of management in the March 3, 1997 issue of Fortune magazine. We will pay competitive market wages to our employees.

Currently, Valvino is a party to five collective bargaining agreements with four different unions which it assumed in connection with the acquisition of the Desert Inn Resort & Casino. All of these agreements will expire before the scheduled opening of Le Rêve. However, the unions may seek to organize the workers at Le Rêve or claim that the agreements assumed in connection with Valvino's acquisition of the Desert Inn Resort & Casino obligate us to enter into negotiations with one or more of the unions to represent the workers at Le Rêve. Unionization or pressure to unionize could increase our labor costs.

Trademarks, Service Marks and Copyrights

We have purchased the common-law name and mark "LE REVE" from a California trust operating a hotel by that name. This purchase removed the California trust as a prior user with superior rights, and potentially enhanced our rights to the name for hotel services. We have also applied to register the "LE REVE" trademark and service marks in the United States Patent and Trademark Office for hotel services and casinos. In addition, we have applied to use this mark for other uses, including gift shop items, none of which, individually, will be material to our business. Each of these applications is pending.

The Patent and Trademark Office translates "LE REVE" as "THE DREAM" and, as a result, has cited other "DREAM" marks as a basis for preliminarily refusing to allow our "LE REVE" applications. We believe there is a reasonable possibility of overcoming some of these preliminary refusals.

Properties

Land. We currently own approximately 212 acres of land on or near the Las Vegas Strip on the site of the former Desert Inn Resort & Casino. Le Rêve will total 192 acres consisting of approximately 55 acres at the northeast corner of the intersection of Las Vegas Boulevard and Sands Avenue and the approximately 137-acre golf course to be constructed behind the hotel. The balance of the 212 acres consists of an additional parcel of approximately 20 acres that is available for future development.

Water rights. Wynn Resorts indirectly owns approximately 935 acre-feet of certificated water rights through its subsidiary, Desert Inn Improvement Co. Desert Inn Improvement Co. currently provides water to the existing office building on the site of the former Desert Inn Resort & Casino and the remaining homes around the golf course and, as a result, is a public utility company under Nevada law and is subject to regulatory restrictions imposed by the Nevada Public Utilities Commission. See "Risk Factors—General Risks Associated with Our Business—We will be subject to regulatory control by the Public Utilities Commission of Nevada."

Valvino owns an additional approximately 50 acre-feet of certificated water rights. This water will be used to supply the water for the Le Rêve lake, subject to the approval of the Nevada State Engineer. See "—Premier Location and Other Features of the Le Rêve Site—Water Rights."

Legal Proceedings

From time to time, we are involved in litigation relating to claims arising out of the ordinary course of business.

In addition, Valvino is currently involved in litigation related to its ownership and development of residential lots around the former Desert Inn golf course. Valvino acquired some, but not all, of the residential lots located in the interior of and around the former Desert Inn golf course when it acquired the former Desert Inn Resort & Casino from Starwood Hotels & Resorts Worldwide, Inc. Valvino later acquired all of the remaining lots located in the interior of, and some of the remaining lots around, the former Desert Inn golf course. In total, Valvino acquired 63 of the 75 residential lots, with Clark County having acquired two of the lots through eminent domain in 1994 as part of the widening of Desert Inn Road. The residential lots, previously known collectively as the Desert Inn Country Club Estates, were subject to various conditions, covenants and restrictions recorded against the lots in 1956 and amended from time to time since then.

On October 31, 2000, Ms. Stephanie Swain, as trustee of the Mark Swain Revocable Trust, and some of the homeowners whose lots Valvino did not purchase filed an action in Clark County against Valvino and the then directors of the Desert Inn Country Club Estates Homeowners' Association. The plaintiffs are seeking various forms of declaratory relief concerning the continued governance of the homeowners' association. In addition, the plaintiffs have challenged the termination in June 2001 of the conditions, covenants and restrictions recorded against the residential lots. The plaintiffs also seek to establish certain easement rights that Ms. Swain and the other homeowners claim to possess. Specifically, the remaining homeowners seek to establish easement rights to enter upon the golf course for exercise and other leisure purposes, and to use the roadways for entrance and exit purposes. At least two of the plaintiffs also have alleged the existence of an equitable implied restriction prohibiting any alternative commercial development of the golf course.

The trial in this matter is scheduled for February 2003. The court has, nonetheless, entered several preliminary injunction orders concerning the parties' respective property rights. Among other things, the court has ordered that Valvino is free to develop the golf course and the remainder of its property as it deems fit, subject to all applicable legal restraints. In that regard, Valvino was permitted to remove all homes and structures on its properties surrounding the golf course and those located on the Country Club Lane cul de sac, which ran to the interior of the golf course. Valvino has removed all structures that were on its lots, together with the cul-de-sac, and has relandscaped the property to blend into the existing golf course. The court has also entered an order prohibiting Ms. Swain from filing a lis pendens against the golf course property.

The plaintiffs have sought, and successfully obtained, a preliminary injunction to compel Valvino to subsidize security to homeowners who reside near the project. Valvino has appealed this ruling and the issue is now pending before the Nevada Supreme Court.

Discovery in this case is currently ongoing. Valvino is vigorously contesting all of the homeowners' claims and will continue to do so. However, if the plaintiffs prevail on their claims and the conditions, covenants and restrictions on the lots remain in effect, we may have to adjust our current plans for the construction of the golf course by redesigning some of the holes located on the periphery of the course. In addition, if the court finds that there is an implied equitable restriction on the golf course lots, any future development of the golf course parcel for an alternative use may be restricted.

Macau Opportunity

The government of the Macau Special Administrative Region of the People's Republic of China has awarded Wynn Resorts (Macau), S.A. a provisional concession to negotiate a concession agreement with the Macau government to construct and operate one or more casinos in Macau.

The Macau peninsula, located in southeast China on the South China Sea, is approximately 37 miles south of Hong Kong, the home of many of the tourists and the entry point for a significant number of other tourists, who visit Macau's casinos every year. According to the Macau Tourism Board, approximately 10 million people visited Macau during 2001.

Macau was a colony of Portugal for almost 450 years. In December 1999, Portugal transferred control of Macau to China, which reestablished the territory as a special administrative region of China. In the past, gaming in Macau had been administered as a government-sanctioned monopoly franchise awarded to a single business. However, under the authority of the Chief Executive and the newly appointed Casino Tender Commission of

Macau SAR, the government of Macau has recently decided to liberalize the gaming industry by granting concessions to operate casinos to three companies. *Sociedade de Jogos de Macau*, owned by Stanley Ho, who through another entity has held the monopoly franchise to conduct the only gaming operations in Macau for approximately 40 years, has been granted one of the concessions. Galaxy Casino Co. Ltd., which has entered into a management agreement with the operators of The Venetian in Las Vegas, has been awarded a provisional concession to negotiate an agreement for another concession. Wynn Resorts (Macau), S.A., of which we expect to own 80%, has been awarded a provisional concession which permits it to negotiate with the government of Macau an agreement for the third concession.

We are in the process of negotiating such a concession agreement. We are also in the process of negotiating acquisition of the rights to use the land on which we would build the first casino. If we can reach agreement with the government of Macau with respect to the concession and the land, we may be able to capitalize on the opportunity to own one or more casinos in Macau. However, we cannot assure you that we will reach any such agreement on terms that are satisfactory to us or at all. If we do not reach a satisfactory agreement, we will be unable to build or operate any casinos in Macau.

In addition, potential concession holders are subject to suitability requirements in terms of background, business experience, associations and reputation, as are shareholders of 5% or more of the concession holder's equity securities, officers, directors and key employees. The government of the Macau SAR also evaluates potential concession holders in terms of financial capability to sustain a gaming business in Macau. Failure to satisfy the government's requirements to be awarded a gaming concession would prevent us from opening casinos in Macau.

Moreover, we would need to obtain the necessary financing to fund the development, design and construction of such a project or projects. We contemplate that such financing would involve incurring indebtedness or offering equity in our foreign subsidiaries. We cannot assure you that we would be able to obtain such financing on acceptable terms or at all.

As a result of these factors, our opportunity to build and operate one or more casinos in Macau is highly contingent and you should not rely on such opportunity in deciding to purchase Wynn Resorts' common stock.

If we develop our opportunity in Macau, certain Nevada gaming laws will apply to our proposed gaming activities and associations there. For example, we will be required to comply with certain reporting requirements and, certain circumstances, we may be subject to disciplinary action by the Nevada Gaming Commission if we:

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

In addition, if the Nevada State Gaming Control Board determines that any of our actual or intended activities or associations in Macau may be prohibited pursuant to one or more of the standards described above, the Nevada State Gaming Control Board can require us to file an application with the Nevada Gaming Commission for a finding of suitability of the activity or association. If the Nevada Gaming Commission finds that the activity or association in Macau is unsuitable or prohibited, we will either be required to terminate the activity or association, or we will be prohibited from undertaking the activity or association. Consequently, should the Nevada Gaming Commission find that our gaming activities or associations in Macau are unsuitable, we may be prohibited from undertaking our planned gaming activities or associations in Macau, or be required to divest our investment in Macau on unfavorable terms. See "Risk Factors—Risks Associated with our Macau Opportunity—If we are granted a concession to build and operate one or more casinos in Macau, certain Nevada gaming laws would apply to our planned gaming activities and associations in Macau."

REGULATION AND LICENSING

Introduction.

The gaming industry is highly regulated. The following description should not be construed as a complete summary of all the regulatory requirements that we face. Gaming registrations, licenses and approvals, once obtained, can be suspended or revoked for a variety of reasons. We cannot assure you that we will obtain all required registrations, licenses and approvals on a timely basis or at all, or that, once obtained, the registrations, findings of suitability licenses and approvals will not be suspended, conditioned, limited or revoked. See "Risk Factors—General Risks Associated with Our Business—Le Rêve is subject to extensive state and local regulation and licensing and gaming authorities have significant control over our operations, which could have a negative effect on our business." If we ever are prohibited from operating one of our gaming facilities, we would, to the extent permitted by law, seek to recover our investment by selling the property affected, but we cannot assure you that we would recover its full value.

The ownership and operation of casino gaming facilities in the State of Nevada are subject to the Nevada Gaming Control Act and the regulations made under the Act, as well as to various local ordinances. Once the resort is open, Le Rêve's operations, will be subject to the licensing and regulatory control of the Nevada Gaming Commission, the Nevada State Gaming Control Board and the Clark County Liquor and Gaming License Board, which we refer to collectively as the Nevada Gaming Authorities.

Policy Concerns of Gaming Laws.

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

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

Changes in these laws, regulations and procedures could have significant negative effects on Le Rêve's proposed gaming operations and our financial condition and results of operations.

Owner and Operator Licensing Requirements.

Before Le Rêve opens, Wynn Las Vegas, as the owner, operator and manager of Le Rêve, will be required to seek approval from, and be licensed by, the Nevada Gaming Authorities as a limited liability company licensee, referred to as a company licensee. If we are granted a gaming license, we will have to pay periodic fees and taxes. The gaming license will not be transferable. We cannot assure you that Wynn Las Vegas will be able to obtain approval and license from the Nevada Gaming Authorities on a timely basis or at all.

Company Registration Requirements.

Before Le Rêve opens, Wynn Resorts will be required to apply to, and be found suitable by, the Nevada Gaming Commission to own the equity interests of Valvino and to be registered by the Nevada Gaming Commission as a publicly traded corporation, referred to as a registered company, for the purposes of the Nevada Gaming Control Act. Valvino will be required to apply to, and be found suitable by, the Nevada Gaming Commission to own the equity interests of Wynn Resorts Holdings and to be registered by the Nevada Gaming Commission as an intermediary company. Wynn Resorts Holdings will also be required to apply to, and be found suitable by, the Nevada Gaming Commission to own the equity interests of Wynn Las Vegas and to be registered by the Nevada Gaming Commission as an intermediary company. Wynn Las Vegas, as an issuer of the second mortgage notes, will also qualify as a registered company and, in addition to being licensed, will be required to be registered by the Nevada Gaming Commission as a registered company. Wynn Capital will not be required to be registered or licensed, but may be required to be found suitable as a lender or financing source. We cannot assure you that the approvals from the Nevada Gaming Authorities will be obtained on a timely basis or at all.

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

Individual Licensing Requirements.

No person may become a stockholder or member of, or receive any percentage of the profits of, an intermediary company or company licensee without first obtaining licenses and approvals from the Nevada Gaming Authorities. The Nevada Gaming Authorities may investigate any individual who has a material relationship to, or material involvement with, us to determine whether the individual is suitable or should be licensed as a business associate of a gaming licensee. We and our officers, directors and certain key employees will be required to file applications with the Nevada Gaming Authorities and may be required to be licensed or found suitable by the Nevada Gaming Authorities. The Nevada Gaming Authorities may deny an application for licensing for any cause which they deem reasonable. A finding of suitability is comparable to licensing, and both require submission of detailed personal and financial information followed by a thorough investigation. An applicant for licensing or an applicant for a finding of suitability must pay for all the costs of the investigation. Changes in licensed positions must be reported to the Nevada Gaming Authorities and, in addition to their authority to deny an application for a finding of suitability or licensing, the Nevada Gaming Authorities have the jurisdiction to disapprove a change in a corporate position.

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

Redemption of Securities Owned By an Unsuitable Person.

Wynn Resorts' articles of incorporation will provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent deemed necessary or advisable by the

board of directors, Wynn Resorts may redeem shares of its capital stock or other interests in its securities that are owned or controlled by an unsuitable person or its affiliates. The redemption price will be the amount, if any, required by the gaming authority or, if the gaming authority does not determine the price, the sum deemed reasonable by Wynn Resorts. If Wynn Resorts determines the redemption price, the redemption price will be capped at the closing price of the shares on the principal national securities exchange on which the shares are listed on the trading date on the day before the redemption notice is given. If the shares are not listed on a national securities exchange, the redemption price will be capped at the closing sale price of the shares, or if the closing price is not reported, the mean of the bid and asked prices, as quoted on the Nasdaq stock market or another generally recognized reporting system. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects.

Aruze USA, which, immediately before the closing of this offering, will own 47.431% of Wynn Resorts' common stock, also will be required to apply to, and be licensed or found suitable by, the Nevada Gaming Commission and be registered as a holding company of Wynn Resorts prior to the opening of Le Rêve. Kazuo Okada is the owner of a controlling interest in Aruze Corp., the parent company of Aruze USA, and will also be required to be licensed or found suitable. Aruze Corp. will qualify as a publicly traded corporation under the terms of the Nevada Gaming Control Act and will be required to apply to, and be registered by, the Nevada Gaming Commission as a registered company and to be found suitable to own the stock of Aruze USA. Any beneficial owner of more than 10% of Aruze Corp.'s voting securities must also be licensed or found suitable, including Kazuo Okada and his son, Tomohiro Okada. Kazuo Okada is currently licensed by the Nevada Gaming Commission to own the shares of Universal Distributing of Nevada, Inc., a gaming machine manufacturer and distributor. Kazuo Okada and Tomohiro Okada previously sought approval from the Nevada Gaming Commission in connection with the proposed transfer of Universal Distributing to Aruze Corp. In connection with this application, the Nevada State Gaming Control Board raised certain concerns, including transactions which were then the subject of a pending tax case in Japan which involved Universal Distributing, Aruze Corp. and other related parties. The pursuit of this proposed transfer of Universal Distributing was deferred pending resolution of the Japanese tax case. The lower court in the Japanese tax case ruled in Aruze Corp.'s favor, but the Japanese tax authority has filed an appeal. It is unclear whether or how these events will affect the Nevada Gaming Commission's consideration of suitability with respect to Aruze USA's ownership of Wynn Resorts' stock.

Aruze Corp. has informed us that there are a number of outstanding issues in the investigation of the proposed transfer of Universal Distributing including issues relating to the transactions involved in the above-described tax proceeding. These issues, if not satisfactorily resolved, could result in the denial of the application. No formal action of any kind has been taken by the Nevada State Gaming Control Board or the Nevada Gaming Commission in connection with these issues. If either of these bodies was to act adversely with respect to the pending proceeding involving Universal Distributing, that decision could adversely affect an application filed by Aruze USA, Aruze Corp., Kazuo Okada or Tomohiro Okada in respect of Wynn Resorts.

In addition to Wynn Resorts' redemption rights under its articles of incorporation, Mr. Wynn, Kazuo Okada, Aruze USA, Aruze Corp. and Wynn Resorts have entered into arrangements which provide that if any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or requested to be withdrawn or is not filed within 90 days after the filing

of Wynn Resorts' application, Mr. Wynn may elect to purchase the shares owned by Aruze USA in Wynn Resorts. Mr. Wynn may pay this purchase price with a promissory note. If Mr. Wynn chooses not to exercise his right to purchase the shares, Wynn Resorts has the right to require him to purchase the shares, including with a promissory note. The prior buy-out arrangements under the Valvino operating agreement and under the stockholders agreement between Mr. Wynn, Aruze USA and Baron Asset Fund were terminated upon the effectiveness of the new agreement. See "Certain Relationships and Related Party Transactions—Buy-Out of Arzue USA Stock."

As described above, if Wynn Resorts, pursuant to its articles of incorporation, or Mr. Wynn, pursuant to the buy-out agreement described above, purchases the shares of Wynn Resorts' stock held by an unsuitable person or its affiliate, including Aruze USA, Wynn Resorts and/or Mr. Wynn may, in lieu of immediate payment of the purchase price, issue a promissory note. However, if the Nevada Gaming Commission were to find the unsuitable person or its affiliate unsuitable to own the voting securities of Wynn Resorts, it could also determine that the person is unsuitable to hold a promissory note for the purchase of such voting securities by Wynn Resorts or Mr. Wynn, and could determine not to approve the issuance of the promissory note to the unsuitable person or its affiliate. In such event, the Nevada Gaming Commission could order the unsuitable person or its affiliate to dispose of its voting securities within a prescribed period of time that may or may not be a sufficient period of time to dispose of the securities in an orderly manner. Depending upon the period of time for disposition required by the Nevada Gaming Commission, this could have a negative effect on the price of the stock of Wynn Resorts. In the event that the unsuitable person or its affiliate is unable or fails to dispose of its voting securities within the prescribed period of time, or if Wynn Resorts fails to pursue all lawful efforts to require the unsuitable person or its affiliate to relinquish its voting securities, including, if necessary, the immediate purchase of the voting securities for cash at fair market value, the Nevada Gaming Commission could determine that Wynn Resorts was unsuitable or could take disciplinary action against Wynn Resorts. Disciplinary action could result in the limitation, conditioning, suspension or revocation of any approvals or gaming licenses held by Wynn Resorts and/or the imposition of a significant monetary fine against Wynn Resorts. Any such disciplinary action could significantly impair our operations.

Consequences of Violating Gaming Laws.

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

Requirements for Beneficial Securities Holders.

Regardless of the number of shares held, any beneficial holder of Wynn Resorts' voting securities, may be required to file an application, be investigated and have that person's suitability as a beneficial holder of voting securities determined if the Nevada Gaming

Commission has reason to believe that the ownership would otherwise be inconsistent with the declared policies of the State of Nevada. If the beneficial holder of the voting securities of Wynn Resorts who must be found suitable is a corporation, partnership, limited partnership, limited liability company or trust, it must submit detailed business and financial information including a list of beneficial owners. The applicant must pay all costs of the investigation incurred by the Nevada Gaming Authorities in conducting any investigation.

The Nevada Gaming Control Act requires any person who acquires more than 5% of the voting securities of a registered company to report the acquisition to the Nevada Gaming Commission. The Nevada Gaming Control Act requires beneficial owners of more than 10% of a registered company's voting securities to apply to the Nevada Gaming Commission for a finding of suitability within 30 days after the Chairman of the Nevada State Gaming Control Board mails the written notice requiring such filing. Under certain circumstances, an "institutional investor," as defined in the Nevada Gaming Control Act, which acquires more than 10%, but not more than 15%, of the registered company's voting securities may apply to the Nevada Gaming Commission for a waiver of a finding of

suitability if the institutional investor holds the voting securities for investment purposes only. An institutional investor will not be deemed to hold voting securities for investment purposes unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board at directors of the registered company, a change in the registered company's corporate charter, bylaws, management, policies or operations of the registered company, or any of its gaming affiliates, or any other action which the Nevada Gaming Commission finds to be inconsistent with holding Wynn Resorts' voting securities for investment purposes only. Activities which are not deemed to be inconsistent with holding voting securities for investment purposes only include:

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

The articles of incorporation of Wynn Resorts will include provisions intended to help it implement the above restrictions. See "Description of Capital Stock —Prohibitions on the Receipt of Dividends, the Exercise of Voting or Other Rights or the Receipt of Other Remuneration."

Consequences of Being Found Unsuitable.

Any person who fails or refuses to apply for a finding of suitability or a license within 30 days after being ordered to do so by the Nevada Gaming Commission or by the Chairman of the Nevada State Gaming Control Board, or who refuses or fails to pay the investigative costs incurred by the Nevada Gaming Authorities in connection with the investigation of its application, may be found unsuitable. The same restrictions apply to a record owner if the record owner, after request, fails to identify the beneficial owner. Any person found unsuitable and who holds, directly or indirectly, any beneficial ownership of any voting security or debt security of a registered company beyond the period of time as may be prescribed by the Nevada Gaming Commission may be guilty of a criminal offense. We will be subject to

disciplinary action if, after we receive notice that a person is unsuitable to hold an equity interest or to have any other relationship with, we:

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

Clark County Liquor and Gaming License Board.

In addition, the Clark County Liquor and Gaming License Board has the authority to approve all persons owning or controlling the stock of any corporation controlling a gaming license.

Gaming Laws Relating to Securities Ownership.

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

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

Wynn Resorts will be required to maintain a current stock ledger in Nevada which may be examined by the Nevada Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities. A failure to make the disclosure may be grounds for finding the record holder unsuitable. We will be required to render maximum assistance in determining the identity of the beneficial owner of any of Wynn Resorts' voting securities. The Nevada Gaming Commission has the power to require the stock certificates of any registered company to bear a legend indicating that the securities are subject to the Nevada Gaming Control Act. We do not know whether this requirement will be imposed on us.

Approval of Public Offerings.

Once Wynn Resorts becomes a registered company, it may not make a public offering of Wynn Resorts' securities without the prior approval of the Nevada Gaming Commission if it intends to use the securities or the proceeds from the offering to construct, acquire or finance

gaming facilities in Nevada, or to retire or extend obligations incurred for those purposes or for similar transactions. Any approval that we might receive in the future relating to this or future offerings does not constitute a finding, recommendation or approval by any of the Nevada Gaming Authorities as to the accuracy or adequacy of the offering memorandum or the investment merits of the securities. Any representation to the contrary is unlawful.

The regulations of the Nevada Gaming Commission also provide that any entity which is not an "affiliated company," as that term is defined in the Nevada Gaming Control Act, or which is not otherwise subject to the provisions of the Nevada Gaming Control Act or regulations, such as Wynn Resorts and Wynn Las Vegas, that plans to make a public offering of securities intending to use such securities, or the proceeds from the sale thereof, for the construction or operation of gaming facilities in Nevada, or to retire or extend obligations incurred for such purposes, may apply to the Nevada Gaming Commission for prior approval of such offering. The Nevada Gaming Commission may find an applicant unsuitable based solely on the fact that it did not submit such an application, unless upon a written request for a ruling, referred to as a ruling request, the Nevada State Gaming Control Board Chairman has ruled that it is not necessary to submit an application. The offering of common stock pursuant to this prospectus will qualify as a public offering. We intend to file a ruling request with the Nevada State Gaming Control Board Chairman for a ruling that it is not necessary to submit this offering of common stock or the offering of second mortgage notes by Wynn Las Vegas for prior approval. We cannot assure you that the ruling request will be granted or that it will be considered on a timely basis. If the ruling request is not granted, we will promptly file an application requesting approval of this offering. If the ruling request is not granted, this offering could be significantly delayed while we seek approval of the Nevada State Gaming Control Board and Nevada Gaming Commission. We cannot assure you that approval of this offering or the offering of the second mortgage notes, if required, will be granted or if granted, will be granted on a timely basis.

Approval of Changes in Control.

Once Wynn Resorts becomes a registered company, it must obtain prior approval of the Nevada Gaming Commission with respect to a change in control through:

- merger;
- consolidation;
- stock or asset acquisitions;
- management or consulting agreements; or
- any act or conduct by a person by which the person obtains control of us.

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

Approval of Defensive Tactics.

The Nevada legislature has declared that some corporate acquisitions opposed by management, repurchase of voting securities and corporate defense tactics affecting Nevada gaming licenses, and registered companies that are affiliated with those operations, may be

harmful to stable and productive corporate gaming. The Nevada Gaming Commission has established a regulatory scheme to reduce the potentially adverse effects of these business practices upon Nevada's gaming industry and to further Nevada's policy to:

- assure the financial stability of corporate gaming operators and their affiliates;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

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

Fees and Taxes.

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

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

A casino entertainment tax is also paid by casino operations where entertainment is furnished in connection with the selling or serving of food or refreshments or the selling of merchandise.

Foreign Gaming Investigations.

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

- knowingly violates any laws of the foreign jurisdiction pertaining to the foreign gaming operation;
- fails to conduct the foreign gaming operation in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engages in any activity or enters into any association that is unsuitable because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect,

discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to the gaming policies of Nevada;

- engages in activities or enters into associations that are harmful to the State of Nevada or its ability to collect gaming taxes and fees; or
- employs, contracts with or associates with a person in the foreign operation who has been denied a license or finding of suitability in Nevada on the ground of unsuitability.

License for Sale of Alcoholic Beverages.

The sale of alcoholic beverages at Le Rêve will be subject to licensing, control and regulation by the Clark County Liquor and Gaming Licensing Board. All licenses are revocable and are not transferable. The county agency has full power to limit, condition, suspend or revoke any license. Any disciplinary action could, and revocation would, have a substantial negative impact upon our operations.

MANAGEMENT

Directors and Executive Officers

Upon consummation of this offering, Wynn Resorts' directors and executive officers and their ages and positions will be as follows:

Name	Age	Positions
Stephen A. Wynn	60	Chairman of the Board of Directors and Chief Executive Officer
Kazuo Okada	60	Vice Chairman of the Board of Directors
Ronald J. Kramer	43	Director and President
Robert J. Miller	57	Director
Elaine P. Wynn	60	Director
Stanley R. Zax	64	Director
Marc D. Schorr	54	Chief Operating Officer
John Strzemp	50	Executive Vice President and Chief Financial Officer
Marc H. Rubinstein	41	Senior Vice President, General Counsel and Secretary
Matt Maddox	26	Vice President—Investor Relations and Treasurer
Kenneth R. Wynn	49	President, Wynn Design & Development
DeRuyter O. Butler	46	Executive Vice President—Architecture, Wynn Design & Development

Stephen A. Wynn has served as Chairman of our board of directors and Chief Executive Officer since June 2002. Since April 2000, Mr. Wynn has been the managing member of Valvino, our wholly owned subsidiary. From 1973 until 2000, Mr. Wynn served as Chairman of the Board, President and Chief Executive Officer of Mirage Resorts and its predecessor. Mr. Wynn is a Trustee of the University of Pennsylvania. Mr. Wynn is married to Mrs. Elaine P. Wynn and is the brother of Mr. Kenneth R. Wynn.

Kazuo Okada has agreed to serve as Vice Chairman of our board of directors. Mr. Okada founded Aruze Corp., a Japanese manufacturer of pachislot and pachinko machines and video game software, in 1969 and serves as its President. Mr. Okada also owns, and is currently licensed by the Nevada Gaming Commission to own the shares of, Universal Distributing of Nevada, Inc., a gaming machine supplier company. Mr. Okada also serves as Chairman of Adores Corporation, a subsidiary of Aruze Corp. and an operator of amusement centers in Japan.

Ronald J. Kramer has agreed to serve as President and as a director. Mr. Kramer has served as President of Wynn Resorts Holdings, our wholly owned subsidiary, since April 2002. From July 1999 to October 2001, Mr. Kramer was a managing director and partner at Dresdner Kleinwort Wasserstein, an investment banking firm, and its predecessor Wasserstein Perella & Co. Mr. Kramer served as Chairman and Chief Executive Officer of Ladenburg Thalmann Group Inc. from May 1995 to June 1999. Mr. Kramer is also a member of the board of directors of TMP Worldwide, Inc., Griffon Corporation, Lakes Entertainment, Inc. and New Valley Corporation.

Robert J. Miller has agreed to serve as a director. Robert J. Miller is a partner of the Nevada law firm of Jones Vargas. He is also counsel to KNP, a government relations company, which is a subsidiary of the Dutko Group based in Washington, DC. From 1989 until 1999, he

served as Governor of the State of Nevada, and, from 1987 to 1989, he served as Lieutenant Governor of the State of Nevada. Mr. Miller serves as a Director of Zenith National Insurance Corp., Newmont Mining Corporation, International Game Technology, America West Holdings Corporation and K12 Inc. He also serves as a member of the U.S. Secretary of Energy Advisory Board and several national charitable organizations.

Elaine P. Wynn has agreed to serve as a director. Mrs. Wynn has served as Co-Chairperson of the Greater Las Vegas Inner-City Games Foundation since 1996 and currently serves on the Executive Board of the Consortium for Policy Research in Education and the Council to Establish Academic Standards in Nevada. Mrs. Wynn has been active in civic and philanthropic affairs in Las Vegas for many years and has received numerous honors for her charitable and community work. Mrs. Wynn served as a director of Mirage Resorts from 1977 until 2000. Mrs. Wynn is married to Mr. Stephen A. Wynn.

Stanley R. Zax has agreed to serve as a director. Mr. Zax has served as President and Chairman of the Board of Zenith National Insurance Corp., a New York Stock Exchange company, and its wholly owned subsidiary, Zenith Insurance Company, for over five years. Zenith National Insurance Corp. and Zenith Insurance Company are engaged in the property-casualty insurance business. Zenith Insurance Company also conducts real estate operations.

Marc D. Schorr will serve as Chief Operating Officer. Since April 2001, Mr. Schorr has served as Chief Operating Officer of Wynn Resorts Holdings. From June 2000 until April 2001, Mr. Schorr served as Chief Operating Officer of Valvino. From January 1997 through May 2000, Mr. Schorr served as President of The Mirage Casino-Hotel, a gaming company and then a wholly owned subsidiary of Mirage Resorts.

John Strzemp will serve as Executive Vice President and Chief Financial Officer. Since April 2001, Mr. Strzemp has served as Executive Vice President and Chief Financial Officer of Wynn Resorts Holdings. From November 2000 until April 2001, Mr. Strzemp served as Executive Vice President and Chief Financial Officer of Valvino. Mr. Strzemp was Executive Vice President, Chief Financial Officer of Bellagio, LLC, a gaming company and then a wholly owned subsidiary of Mirage Resorts, from 1998 to 2000 and President of Treasure Island Corp., a gaming company and then a wholly owned subsidiary of Mirage Resorts, from 1997 to 1998.

Marc H. Rubinstein will serve as Senior Vice President and General Counsel. Since April 2001, Mr. Rubinstein has served as Senior Vice President—General Counsel of Wynn Resorts Holdings. From June 2000 until April 2001, Mr. Rubinstein served as Senior Vice President—General Counsel of Valvino. Beginning in December 1999, Mr. Rubinstein served as Senior Vice President—General Counsel of Sheraton Desert Inn Corporation, a gaming company, the assets of which were acquired by Valvino in 2000. From 1992 to 1999, Mr. Rubinstein was Senior Vice President—General Counsel & Secretary of Desert Palace, Inc., a gaming company that did business as Caesars Palace and was a wholly owned subsidiary of Caesars World, Inc. and, in 1999, he also served as acting general counsel for Caesars World, Inc., a gaming company and then a wholly owned subsidiary of Starwood Hotels & Resorts Worldwide, Inc.

Matt Maddox has agreed to serve as Vice President—Investor Relations and Treasurer. Mr. Maddox has served as Vice President—Investor Relations and Treasurer of Wynn Resorts Holdings since June 2002. From February 2000 to June 2002, Mr. Maddox served as Vice President—Corporate Finance of Park Place Entertainment, a gaming company. From May 1998 to February 2000, Mr. Maddox was an analyst in the mergers and acquisitions department of Banc of America Securities LLC.

Kenneth R. Wynn has served as President of Wynn Design & Development, LLC, our wholly owned subsidiary since June 2000. From 1973 until 2000, he served as Vice President—Design and Construction and Secretary of Mirage Resorts, except for the periods August 1993 through July 1994 and March 1997 through June 1999. Mr. Kenneth R. Wynn also served as President of Atlandia Design & Furnishings, Inc., a construction supervision and design company and then a wholly owned subsidiary of Mirage Resorts, since 1973. Mr. Kenneth R. Wynn is Mr. Stephen A. Wynn's brother.

DeRuyter O. Butler has served as Executive Vice President—Architecture of Wynn Design & Development since June 2000. In 2000, Mr. Butler co-founded Butler/Ashworth Architects, Ltd., LLC, an architecture firm, and serves as its Executive Vice President of Architecture. Mr. Butler served as Director of Architecture of Atlandia Design & Furnishings from 1993 until 2000.

Board of Directors and Committees

Mr. Wynn and Aruze USA, together with Baron Asset Fund, have entered into a stockholders agreement pursuant to which Mr. Wynn and Aruze USA have agreed to vote their shares of Wynn Resorts' common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which two will be independent directors, and the remaining members of which will be designated by Aruze USA. The stockholders agreement will continue to be in effect after the completion of this offering. For more information about the stockholders agreement between Mr. Wynn, Aruze USA and Baron Asset Fund, see "Certain Relationships and Related Party Transactions—Stockholders Agreement."

Upon completion of this offering, our board of directors intends to appoint an executive committee, an audit committee, a nominating committee and a compensation committee. The executive committee will have all of the powers and authority of the board of directors in managing our business and affairs to the fullest extent authorized by Nevada law.

The audit committee will make recommendations to our board of directors regarding the selection of an independent public accounting firm to be engaged to audit our financial statements, discuss with the independent auditors their independence, review and discuss the audited financial statements with the independent auditors and management and recommend to our board of directors whether the audited financials should be included in our Annual Reports on Form 10-K to be filed with the Securities and Exchange Commission. The composition of the audit committee will comply with the requirements of The Nasdaq Stock Market's National Market.

The nominating committee will make recommendations and prepare a slate of nominees for election as directors.

The compensation committee will make recommendations to the board of directors regarding the annual salaries and other compensation of our officers, provide assistance and recommendations with respect to our compensation policies and practices and assist with the administration of our compensation plans. We expect that the compensation committee will be comprised of at least two independent directors.

Compensation Committee Interlocks and Insider Participation

As noted above, the board of directors will appoint a compensation committee upon completion of this offering. We do not expect that any of our executive officers will serve as a director or member of the compensation committee of another entity, one of whose executive officers serves on our board of directors or compensation committee.

Director Compensation

Upon completion of this offering, each of our directors who is not an employee of Wynn Resorts or its subsidiaries will receive a monthly fee of $4,000 for services as a director. Directors who serve on our executive, audit and compensation committees will receive an additional monthly fee of $1,000. Directors will also receive reimbursement for medical expenses and coverage under our life insurance program. Directors who are employees of Wynn Resorts or its subsidiaries will not receive compensation for their services as directors.

Each non-employee director will receive stock options each year under our 2002 stock incentive plan. The stock options will have an exercise price equal to the market value of Wynn Resorts' common stock on the date of grant and will become exercisable [insert vesting schedule].

Non-employee directors will also be eligible to participate in our Directors' Deferred Compensation Plan, a non-qualified, unfunded deferred compensation plan.

Executive Compensation

The following table sets forth the annual and long-term compensation of Wynn Resorts' Chief Executive Officer. This table also includes, for the fiscal years ended December 31, 2001 and 2000, each of our five other most highly compensated executive officers (collectively, with the Chief Executive Officer, the "Named Executive Officers"). This compensation consists of compensation paid by Wynn Resorts Holdings and Wynn Design & Development.

		Annual Compensation		
Name and Principal Position	**Year**	**Salary($)**	**Bonus($)**	**All Other Compensation ($)(1)**
Stephen A. Wynn(2) Chairman and Chief Executive Officer of Wynn Resorts Holdings	2001 2000	$ 0 $ 0	— —	— —
Marc D. Schorr(3) Chief Operating Officer of Wynn Resorts Holdings	2001 2000	$ 1.00 $ 1.00	— —	— —
Kenneth R. Wynn(4) President of Wynn Design & Development	2001 2000	$ 1.00 $ 1.00	— —	— —
John Strzemp(5) Executive Vice President and Chief Financial Officer of Wynn Resorts Holdings	2001 2000	$ 450,000 $ 65,769	$ 300,530 $ 150,000	$ 14,963 $ 1,648
DeRuyter O. Butler(6) Executive Vice President—Architecture of Wynn Design & Development	2001 2000	$ 350,000 $ 197,885	— $ 35,000	$ 4,596 $ 336
Marc H. Rubinstein(7) Senior Vice President and General Counsel of Wynn Resorts Holdings	2001 2000	$ 286,279 $ 113,708	— $ 12,500	$ 11,847 $ 11,883

(1) Includes 401(k) matching contributions, car allowances and executive life insurance premiums.

(2) Mr. Stephen A. Wynn's employment with Valvino commenced on June 1, 2000.

(3) Mr. Schorr was employed by Valvino from June 1, 2000 until his employment with Wynn Resorts Holdings commenced on April 1, 2001.

(4) Mr. Kenneth R. Wynn's employment with Wynn Design & Development commenced on June 1, 2000.

(5) Mr. Strzemp was employed by Valvino from November 1, 2000 until his employment with Wynn Resorts Holdings commenced on April 1, 2001.

(6) Mr. Butler's employment with Wynn Design & Development commenced on June 1, 2000.

(7) Mr. Rubinstein was employed by Valvino from June 23, 2000 until his employment with Wynn Resorts Holdings commenced on April 1, 2001.

401(k) Plan

We established a retirement savings plan under Section 401(k) of the Internal Revenue Code covering our non-union employees on July 27, 2000. The plan allows employees to defer, within certain limits, up to 18% of their income on a pre-tax basis through contributions to this plan. We match the contributions, within prescribed limits, with an amount equal to 100% of the participant's initial 2% tax deferred contribution and 50% of the tax deferred contribution between 2% and 4% of the participant's compensation.

Wynn Resorts, Limited 2002 Stock Incentive Plan

We intend to adopt our 2002 stock incentive plan before the closing of this offering. The 2002 stock incentive plan provides for the grant of stock awards, incentive stock options and non-qualified stock options to our employees, directors and specified consultants. We intend to reserve a total of shares of Wynn Resorts' common stock for issuance pursuant to the 2002 stock incentive plan subject to certain adjustments set forth in the 2002 stock incentive plan.

Our board of directors intends to delegate general administrative authority over the 2002 stock incentive plan to our compensation committee. The members of the compensation committee will be both "non-employee directors" within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934, as amended, and "outside directors" within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended. The administrator has broad authority to designate recipients of awards and determine the terms and provisions of awards, including the price, expiration date, vesting schedule and terms of exercise.

The exercise price of incentive stock options must be at least 100% of the fair market value of the common stock on the date of grant. Incentive stock options granted to optionees who own more than 10% of our outstanding common stock must have an exercise price that is at least 110% of fair market value of the common stock on the grant date. Our incentive options will expire no later than ten years from the date of grant, or five years with respect to incentive stock options granted to optionees who own more than 10% of our outstanding common stock. The exercise price of nonqualified stock options and the purchase price of stock awards will be determined by the administrator. The 2002 stock incentive plan generally will not allow for the transfer of options. However, the administrator may provide that nonqualified stock options may be transferred (1) pursuant to a qualified domestic relations order or (2) to a family member. During any fiscal year, no optionee may receive grants of incentive stock options and nonqualified stock options in the aggregate which cover more than shares.

After the termination of the employment or services of an optionee for reasons other than for cause, death or disability, exercisable options generally will remain exercisable until the earlier of their expiration as set forth in the option agreement or 90 days after the date of termination of employment. If termination is due to death or disability, exercisable options generally will remain exercisable until the earlier of the expiration date stated in the option agreement or 12 months after the date of death or termination of employment. If termination is for cause, all options, including vested and exercisable ones, are immediately terminated and cancelled.

If certain events occur that result in a change of our organizational or ownership structure, the administrator has the discretion to do one or more of the following:

- shorten the exercise period of the options;
- accelerate the vesting schedule of options or stock awards;

- arrange to have the surviving or successor entity assume or replace options or stock awards; or
- cancel options or stock awards and pay to the holder in cash, with respect to each exercisable option, an amount equal to the excess of the then fair market value of the common stock over the exercise price of the option and, with respect to each stock award, the then fair market value of the stock subject to the award.

We have the authority to amend, alter, suspend or terminate the 2002 stock incentive plan without shareholder approval provided that our doing so does not impair the rights of any optionee or increase the number of shares for which options and stock awards may be granted. We may amend the plan with shareholder approval to increase the number of shares for which options and stock awards may be granted.

Upon the completion of the offering, we intend to grant awards of shares of restricted stock under our 2002 stock incentive plan to each of the following employees: DeRuyter O. Butler, William Todd Nisbet, Marc D. Schorr, John Strzemp, Roger P. Thomas and Kenneth R. Wynn. We also intend to grant an award of shares of restricted stock outside of the 2002 stock incentive plan to Mr. Franco Dragone, the creator of our new entertainment production. The restricted stock will be subject to our repurchase right, which will lapse in November 2004 as to Mr. Strzemp, in June 2005 as to Mr. Schorr and Mr. Kenneth Wynn, in June 2006 as to Mr. Butler, Mr. Thomas and Mr. Dragone and in July 2006 as to Mr. Nisbet.

Employment Agreements

We intend to enter into employment contracts with certain other named executive officers, including Stephen A. Wynn, Marc D. Schorr, Kenneth R. Wynn, John Strzemp, DeRuyter O. Butler and Marc H. Rubinstein, prior to the completion of this offering.

On April 1, 2002, Wynn Resorts Holdings and Valvino, as guarantor, entered into a one-year employment agreement with Mr. Ronald J. Kramer. Pursuant to this agreement, Mr. Kramer is entitled to a base salary of $1,000,000 per year. Mr. Kramer is also entitled to a bonus of at least $1,250,000 based on specified performance criteria. Pursuant to this agreement, Mr. Kramer is also entitled to participate in all welfare, pension and incentive benefit plans that Wynn Resorts Holdings maintains for its senior executives. If at any time during the term of his agreement (1) Wynn Resorts Holdings terminates Mr. Kramer's employment without cause (as defined in the agreement) or (2) Mr. Kramer terminates his employment for good reason (as defined in such agreement), Wynn Resorts Holdings must pay Mr. Kramer (in addition to all accrued base salary, accrued vacation pay and bonus amounts) $1,250,000, unless Mr. Kramer has already been paid a bonus equal to at least that amount from the proceeds of this offering. Pursuant to this agreement, Mr. Kramer is also prevented from competing with Wynn Resorts Holdings and its affiliates for the one year of his employment.

Limitations on Directors' Liability and Indemnification

Wynn Resorts' articles of incorporation limit the liability of directors and officers to the maximum extent permitted by Nevada law. With a few limited exceptions set forth in the Nevada Revised Statutes, Nevada law provides that a director or officer of a corporation is not

individually liable to the corporation or its stockholders for damages resulting from any action or failure to act in his or her capacity as a director or officer unless it is proven that:

- the director's or officer's act or omission constituted a breach of his or her fiduciary duties; and
- the breach involved intentional misconduct, fraud or a knowing violation of the law.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission

Wynn Resorts' bylaws provide that it will indemnify its directors and officers to the fullest extent permitted by Nevada law, provided that the director or officer either is not liable for monetary damages under Nevada law or acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any proceeding that is criminal in nature, had no reasonable cause to believe that his or her conduct was unlawful. Wynn Resorts' articles of incorporation and bylaws require it to pay the expenses of directors and officers incurred in defending a proceeding involving alleged acts or omissions of the director or officer in his or her capacity as such as the expenses are incurred and in advance of the final disposition upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court that he or she is not entitled to be indemnified. The bylaws permit the board of directors to indemnify employees and other persons to the same extent. We believe indemnification under Wynn Resorts' bylaws covers at least negligence and gross negligence on the part of indemnified parties. Except as ordered by a court and for advancement of expenses, a director or officer may not be indemnified if a final adjudication determines that his or her acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the current action. The termination of any proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere, or its equivalent, does not, of itself, under the bylaws create a presumption that the standards described above were not met. However, Wynn Resorts is not permitted by its bylaws to indemnify a director or officer if he or she has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals, to be liable to Wynn Resorts unless that court or another court of competent jurisdiction determines that in view of all of the circumstances, the director or officer is fairly and reasonably entitled to indemnification.

In addition to indemnification provided for in Wynn Resorts' bylaws, Wynn Resorts intends to enter into agreements to indemnify its directors and executive officers. These agreements, among other things, will provide for indemnification of Wynn Resorts' directors and executive officers for expenses, judgments, fines and settlement amounts incurred by any such person in any action or proceeding arising out of such person's services as a director or executive officer or at its request. Wynn Resorts may also maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee or agent. We believe these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

The limited liability and indemnification provisions in Wynn Resorts' articles of incorporation and bylaws may discourage stockholders from bringing a lawsuit against its directors for breach of their fiduciary duties and may reduce the likelihood of derivative litigation against its directors and officers, even though a derivative litigation, if successful, might otherwise benefit Wynn Resorts and its stockholders. A stockholder's investment in Wynn Resorts may be negatively affected to the extent that it pays the costs of settlement or damage awards against its directors or officers under these indemnification provisions.

At present, there is no pending litigation or proceeding involving any of Wynn Resorts' directors, officers or employees in which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

We have been advised that, in the opinion of the Securities and Exchange Commission, indemnification of directors or officers for liabilities arising under the Securities Act of 1933, as amended, is against public policy and, therefore, such indemnification provisions may be unenforceable.

Key Man Life Insurance

We intend to obtain $30 million of key man life insurance with respect to Mr. Stephen A. Wynn for our benefit.

Directors' and Officers' Insurance

Wynn Resorts expects to maintain a directors' and officers' liability insurance policy that provides its officers and directors with liability coverage in amounts it considers appropriate.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Concession Contract for Macau. Wynn Resorts (Macau), S.A., holds a provisional concession to negotiate with the government of Macau a concession agreement permitting the construction and operation of casinos in Macau. Before April 22, 2002, Mr. Wynn owned a majority of the outstanding equity interests of Wynn Resorts (Macau), S.A. On April 22, 2002, Mr. Wynn contributed his interest in Wynn Resorts (Macau), S.A., to Valvino. This interest was valued at approximately $56 million, after reimbursement to Mr. Wynn of approximately $825,000 advanced by him to Wynn Resorts (Macau), S.A., in connection with the negotiation of the concession agreement and other development activities in Macau. Minority partners currently hold approximately 10% of the ownership interest in Wynn Resorts (Macau), S.A., and, ultimately, are expected to hold approximately 20% of such ownership interest.

Stockholders Agreement. As previously discussed, Mr. Wynn, Aruze USA and Baron Asset Fund are parties to a stockholders agreement. The stockholders agreement establishes various rights among Mr. Wynn, Aruze USA and Baron Asset Fund with respect to the ownership and management of Wynn Resorts. These rights include, but are not limited to, certain tag-along rights, preemptive rights, rights of first refusal and certain other restrictions on the transfer of the shares of Wynn Resorts' common stock owned by the parties to the stockholders agreement. In addition, under the stockholders agreement, Mr. Wynn and Aruze USA have agreed to vote their shares of Wynn Resorts' common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which two will be independent directors, and the remaining members of which will be designated by Aruze USA. As a result of this voting arrangement, Mr. Wynn may control Wynn Resorts' board of directors. The stockholders agreement incorporates certain provisions set forth in the operating agreement for Valvino pursuant to which, if Aruze USA's ownership of the shares of Wynn Resorts' common stock impairs Wynn Resort's ability to obtain a gaming license, either Wynn Resorts or Mr. Wynn could purchase the shares of Wynn Resorts owned by Aruze USA. In addition, in such circumstances, Aruze USA could demand that Wynn Resorts purchase its shares. These arrangements were terminated under the arrangement described below. In other respects, the stockholders agreement will continue to be in effect after the completion of this offering.

Buy-Out of Aruze USA Stock. Mr. Wynn, Kazuo Okada, Aruze USA, Aruze Corp. and Wynn Resorts have entered into arrangements which provide that if any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or requested to be withdrawn or is not filed within 90 days after the filing of Wynn Resorts' application, Mr. Wynn may elect to purchase the shares

owned by Aruze USA in Wynn Resorts. Mr. Wynn may pay this purchase price with a promissory note. If Mr. Wynn chooses not to exercise his right to purchase the shares, Wynn Resorts has the right to require him to purchase the shares, including with a promissory note. The prior buy-out arrangements under the Valvino operating agreement and under the stockholders agreement between Mr. Wynn, Aruze USA and Baron Asset Fund were terminated upon the effectiveness of the new agreement.

Wynn Design & Development. Wynn Design & Development, a wholly owned subsidiary of Wynn Resorts, is responsible for the design and architecture of Le Rêve (except for the showroom) and for managing construction costs and risks associated with the Le Rêve project. Nevada law requires that a firm licensed as a professional architectural organization certify architectural plans. These architectural services for the Le Rêve project will be provided by the firm of Butler/Ashworth Architects, Ltd., LLC. The principals of the Butler/Ashworth firm are DeRuyter Butler and Glen Ashworth, both of whom are employees of Wynn Design &

Development. Mr. Butler is Executive Vice President of Wynn Design & Development. Wynn Design & Development is the only client of the Butler/Ashworth firm and pays the salaries and benefits of Messrs. Butler and Ashworth. Neither we nor Mr. Wynn has an ownership interest in Butler/Ashworth.

Art Gallery. We operate an art gallery at the former premises of the Desert Inn Resort & Casino in which we display paintings from The Wynn Collection. The art gallery is expected to remain open during the construction of Le Rêve. We lease The Wynn Collection from Mr. and Mrs. Wynn pursuant to an Art Rental and Licensing Agreement. Under the agreement, we pay the expenses of exhibiting works from The Wynn Collection and reimburse Mr. and Mrs. Wynn for the expense of insuring the collection while we exhibit it, which insurance costs approximately $100,000 per year. In addition, we have agreed to make monthly lease payments for the art at a rate equal to the gross revenue received by the gallery each month, less direct expenses, subject to a monthly cap. Under the agreement, we were not required to make any such lease payments prior to April 30, 2002. However, had we been required to make such payments, no amounts would have been due under the lease payment formula because, to date, our expenses in operating the art gallery have exceeded the revenue generated from such operations. Prior to opening Le Rêve, we do not expect to make any material payments under this lease. The only financial exposure that we have under this lease is the cost of operating the art gallery, which is not material. Any payment to Mr. and Mrs. Wynn would be made only from the net revenue of the art gallery. It is contemplated that, after Le Rêve opens, we will continue to lease The Wynn Collection under similar terms and will exhibit the works as an attraction at Le Rêve. Under the Art Rental and Licensing Agreement, subject to certain notice restrictions, Mr. and Mrs. Wynn will retain the right to remove or replace any or all of the works of art that will be displayed in the art gallery.

Aircraft Arrangements. Until January 2002, Valvino used a Gulfstream Aerospace model G-1159A aircraft in its business operations. The aircraft was owned by Kevyn, LLC, which, until April 1, 2001, was wholly owned by Mr. Wynn, and leased to and operated under a Part 135 charter certificate by Las Vegas Jet, LLC, formerly Las Vegas CharterJet, LLC, a charter business owned by Mr. Wynn. Valvino paid Las Vegas Jet an hourly rate for its use of the aircraft and disbursed funds for payroll, property taxes, insurance and all other operating expenses on behalf of Las Vegas Jet. As of April 1, 2001, and in accordance with Valvino's operating agreement, Mr. Wynn sold Kevyn to Valvino for $10,035,000. Pursuant to Federal Aviation Administration regulations restricting the registration of aircraft in the United States by entities with substantial foreign ownership, Kevyn transferred legal title to the aircraft to First Security Bank, National Association, a national banking association, pursuant to a Trust Agreement dated as of April 2, 2001. After the transfers, Kevyn continued to lease the aircraft to Las Vegas Jet, and Las Vegas Jet continued to use the aircraft in its charter business. Valvino paid Las Vegas Jet an hourly rate for its use of the aircraft, and was in turn paid by Las Vegas Jet (through Kevyn) under the aircraft lease. Valvino paid Las Vegas Jet approximately $451,800 and $918,900 for its use of the aircraft in 2000 and 2001, respectively, and approximately $13,600 for its use of the aircraft in January 2002. Wynn Resorts (Macau), S.A. paid Las Vegas Jet approximately $72,600 for its use of the aircraft in 2001. On March 26, 2002, Kevyn sold the aircraft to Cove Partners LLC, an unrelated buyer.

From January 2002 until May 30, 2002, Valvino used a Bombardier Global Express aircraft, serial number 9065, in its business operations. The aircraft is owned by World Travel and was leased to and operated in a charter business by Las Vegas Jet under a Part 135 charter certificate. Valvino paid Las Vegas Jet an hourly rate of $2,600 per hour for its use of the aircraft. Las Vegas Jet and World Travel were owned entirely by Mr. Wynn.

On May 30, 2002, Mr. Wynn sold World Travel and Las Vegas Jet to Valvino for approximately $38 million, the amount that World Travel paid for the aircraft. At that time, World Travel had remaining indebtedness of $28.5 million secured by the aircraft. Valvino assumed this indebtedness in connection with the purchase of the aircraft. Mr. Wynn was released from his guarantee of that indebtedness. World Travel continues to lease the aircraft to Las Vegas Jet. In addition, Las Vegas Jet owes $2,376,000 to Valvino for amounts advanced by Valvino to pay expenses in operating the aircraft. Las Vegas Jet surrendered its Part 135 certificate and operates the aircraft for Wynn Resorts and its subsidiaries under a Part 91 certificate.

Tax Overpayment. In 2001, Mr. Wynn made a substantial overpayment of his personal estimated 2001 federal income taxes to the Internal Revenue Service. Pursuant to a tax procedure set forth in Internal Revenue Service Announcement No. 2001-112, announced October 26, 2001, that permits a taxpayer to redesignate estimated income tax payments as employment tax deposits, Mr. Wynn applied $5,000,000 of his overpayment to the fourth quarter employment taxes of Valvino. By using this procedure, Mr. Wynn was able to accelerate the refund of his overpayment. In May of 2002, the Internal Revenue Service issued a refund for $5,000,000 to Valvino and Valvino reimbursed this sum of money to Mr. Wynn. Valvino did not incur any expense as a result of this transaction.

Desert Inn Water Company. Effective July 10, 2001, the Nevada Public Utilities Commission approved the transfer of the ownership of Desert Inn Water Company, a previously unconsolidated affiliate and wholly owned company of Mr. Wynn, to Valvino.

Capitalization of Valvino. For information regarding the formation of Wynn Resorts and capital contributions to Valvino, the predecessor of Wynn Resorts, see "Principal Stockholders and History of Wynn Resorts, Limited—History of Wynn Resorts."

OWNERSHIP OF CAPITAL STOCK

The following table sets forth information regarding beneficial ownership of Wynn Resorts' common stock as of June 12, 2002, after giving effect to the contribution of membership interests in Valvino to Wynn Resorts, by:

- each of the individuals listed under "Executive Compensation;" ;
- each of Wynn Resorts' directors;
- each person, or group of affiliated persons, who is known by us to own beneficially more than 5% of Wynn Resorts' common stock; and
- all current directors and executive officers as a group.

Except as otherwise indicated in the footnotes below, each beneficial owner has the sole power to vote and to dispose of all shares held by that holder. Percentage ownership is based on shares of common stock outstanding as of and shares of common stock outstanding after completion of this offering. Unless indicated below, the address of each person or entity listed below beneficially owning more than 5% of Wynn Resorts' common stock is c/o Wynn Resorts, Limited, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

	Beneficial Ownership of Common Stock Before Offering		Beneficial Ownership of Common Stock After Offering	
Name	Shares	Percent	Shares	Percent
Stephen A. Wynn(1)(2)(3)		47.431%		
Aruze USA, Inc.(1)(3)(4)		47.431%		
Baron Asset Fund(3)(5)		4.992%		
Kazuo Okada(1)(3)(4)		47.431%		
Ronald J. Kramer		*%		
Robert J. Miller		*%		
Elaine P. Wynn		*%		
Stanley R. Zax		*%		
Kenneth R. Wynn(3)		0.146%		
Marc D. Schorr		*%		
John Strzemp		*%		
Marc H. Rubinstein		*%		
DeRuyter O. Butler		*%		
All Directors and Executive Officers as a Group		47.577%		

* Indicates less than 1%.

(1) Excludes shares which may be deemed to be beneficially owned by virtue of the stockholders agreement between Mr. Stephen A. Wynn, Aruze USA and Baron Asset Fund. Mr. Wynn, Aruze USA and Baron Asset Fund disclaim beneficial ownership of such shares.

(2) Excludes shares held by Aruze USA, which may be deemed to be beneficially owned by Mr. Wynn by virtue of the arrangement which permits Mr. Wynn to acquire Aruze USA's shares of common stock if any gaming application of Aruze USA, Aruze Corp. or Kazuo Okada concerning Aruze USA's ownership of Wynn Resorts' stock is denied by Nevada gaming authorities or withdrawn or is not filled within 90 days after the filing of Wynn Resorts' application. Mr. Wynn disclaims beneficial ownership of such shares.

(3) Giving effect to the purchase of membership interests in Valvino by the Kenneth R. Wynn Family Trust.

(4) 745 Greier Drive, Las Vegas, Nevada 89119. Aruze USA is a subsidiary of Aruze Corp., of which Mr. Kazuo Okada owns a controlling interest. Each of Aruze USA, Aruze Corp. and Mr. Okada may be deemed to have beneficial ownership of these shares.

(5) Includes shares, or 3.644%, held on behalf of the Baron Asset Fund Series and shares, or 1.348%, held on behalf of the Baron Growth Fund Series.

DESCRIPTION OF CAPITAL STOCK

General

Upon the completion of this offering, we will be authorized to issue shares of common stock and shares of undesignated preferred stock, $ par value per share. The following is a summary of the rights of our common stock and preferred stock. This summary is not complete. For more detailed information, see our articles of incorporation and bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part, and the provisions of applicable Nevada law. The following description gives effect to the amendment and restatement of our articles of incorporation and bylaws to be effected immediately before the closing of this offering.

Common Stock

As of , 2002, there were shares of common stock outstanding, which were held of record by approximately stockholders. Except as otherwise provided by our articles of incorporation or Nevada law, the holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Subject to preferences that may be applicable to any outstanding preferred stock and except as otherwise provided by our articles of incorporation or Nevada law, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available for that purpose. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding. A merger, conversion, exchange or consolidation of us with or into any other person or sale or transfer of all or any part of our assets (which does not in fact result in our liquidation and distribution of assets) will not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of our affairs. The holders of common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

Preferred Stock

The board of directors has the authority, without action by the stockholders, to designate and issue preferred stock in one or more series and to designate the rights, preferences and privileges of each series, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of the common stock until the board of directors determines the specific rights of the holders of such preferred stock. However, the effects might include, among other things:

- restricting dividends on the common stock;
- diluting the voting power of the common stock;
- impairing the liquidation rights of the common stock; or
- delaying or preventing a change in control of us without further action by the stockholders.

Preferred Stock and Prohibitions on the Receipt of Dividends, the Exercise of Voting or Other Rights or the Receipt of Other Remuneration

The articles of incorporation of Wynn Resorts will prohibit anyone who is an unsuitable person or an affiliate of an unsuitable person from:

- receiving dividends or interest with regard to its capital stock or other securities of or interests in it and its affiliated companies;
- exercising voting or other rights conferred by its capital stock or other securities of or interests in it and its affiliated companies; and
- receiving any remuneration in any form from it or an affiliated company for services rendered or otherwise

These prohibitions commence on the date that a gaming authority serves notice of a determination of unsuitability and continue until the securities are owned or controlled by persons found suitable by a gaming authority to own them. An "unsuitable person" is any person that is determined by a gaming authority to be unsuitable to own or control any of Wynn Resorts' capital stock or other securities of or interests in it or to be connected or affiliated with a person in engaged in gaming activities or who causes Wynn Resorts or any affiliated company to lose or to be threatened with the loss of, or who, in the sole discretion of Wynn Resorts' board of directors, is deemed likely to jeopardize our application for, right to the use of, or entitlement to, any gaming license.

"Gaming authorities" include all international, foreign, federal state, local and other regulatory and licensing bodies and agencies with authority over gaming (the conduct of gaming and gambling activities, or the use of gaming devices, equipment and supplies in the operation of a casino or other enterprise). "Affiliated companies" are those companies indirectly affiliated or under common ownership or control with Wynn Resorts, including without limitation, subsidiaries, holding companies and intermediary companies (as those terms are defined in gaming laws of applicable gaming jurisdictions) that are registered or licensed under applicable gaming laws. The articles define "ownership" or "control" to mean ownership of record, beneficial ownership as defined in Rule 13d-3 of the Securities and Exchange Commission or the power to direct and manage, by agreement, contract, agency or other manner, the voting or management rights or disposition of our capital stock or other securities of or interests in Wynn Resorts.

Redemption of Securities Owned or Controlled by an Unsuitable Person or an Affiliate

Wynn Resorts' articles of incorporation will provide that capital stock, securities of or interests in Wynn Resorts that are owned or controlled by an unsuitable person or an affiliate of an unsuitable person are redeemable by Wynn Resorts, out of funds legally available for that redemption, by appropriate action of the board of directors to the extent required by the gaming authorities making the determination of unsuitablity or to the extent deemed necessary or advisable by Wynn Resorts. From and after the redemption date, the securities will not be considered outstanding and all rights of the unsuitable person or affiliate will cease, other than the right to receive the redemption price. The redemption price will be the price, if any, required to be paid by the gaming authority making the finding of unsuitability or if the gaming authority does not require a price to be paid, the sum deemed reasonable by Wynn Resorts. If determined by Wynn Resorts, the price of capital stock will not exceed the closing price per share of the shares on the principal national securities exchange on which the shares are then listed on the trading date on the day before the redemption notice is given. If the shares are not then listed, the redemption price will not exceed the closing sales price of the shares, or if the closing price is not then reported the mean of the bid and asked prices, as quoted on the Nasdaq stock market or another generally recognized reporting

system. The redemption price may be paid in cash, by promissory note, or both, as required by the applicable gaming authority and, if not, as Wynn Resorts elects.

The articles of incorporation of Wynn Resorts will require any unsuitable person and any affiliate of an unsuitable person to indemnify Wynn Resorts and its affiliated companies for any and all costs, including attorneys' fees, incurred by Wynn Resorts and its affiliated companies as a result of the unsuitable person's or affiliates ownership or control or failure to promptly divest itself of any capital stock, securities of or interests in Wynn Resorts.

Compliance with Gaming Laws

From the time that Wynn Resorts or any of its affiliated companies applies for licensure or registration or is licensed, the articles of incorporation will require all persons owning or controlling capital stock, securities of or other interests in Wynn Resorts to comply with all requirements of the gaming laws in each gaming jurisdiction in which Wynn Resorts or any affiliated company conducts gaming activities.

Nevada Anti-Takeover Law and Certain Charter and Bylaw Provisions

Provisions of Nevada law and our articles of incorporation and bylaws could make the following more difficult:

- acquisition of us by means of a tender offer;
- acquisition of us by means of a proxy contest or otherwise; or
- removal of our incumbent officers and directors.

These provisions, summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors.

Classified Board of Directors. Wynn Resorts' articles of incorporation and bylaws will provide for its board of directors to be divided into three classes of directors serving staggered three-year terms, with one-third of the board of directors being elected each year. As a result, at least two annual meetings of stockholder may be necessary to change a majority of the directors.

Stockholder Meetings. Wynn Resorts' bylaws will provide that subject to the rights, if any, of the holders of the preferred stock, only the board of directors, the chairman of the board of directors, the chief executive officer or the president may call special meetings of stockholders.

Requirements for Advance Notification of Stockholder Nominations and Proposals. Wynn Resorts' bylaws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

No Action by Written Consent. Wynn Resorts' articles of incorporation and bylaws will provide that stockholders may only take action at an annual or special meeting of stockholders and may not act by written consent.

Nevada Control Share Laws. Following the closing of this offering, Wynn Resorts may become subject to Nevada's laws which govern the "acquisition" of a "controlling interest" of "issuing corporations." These laws will apply to Wynn Resorts if it has 200 or more stockholders of record, at least 100 of whom have addresses in Nevada, unless its articles or

bylaws in effect on the tenth day after the acquisition of a controlling interest provide otherwise. These laws provide generally that any person that acquires a "controlling interest" acquires voting rights in the control shares, as defined, only as conferred by the stockholders of the corporation at a special or annual meeting. In the event control shares are accorded full voting rights and the acquiring person has acquired at least a majority of all of the voting power, any stockholder of record who has not voted in favor of authorizing voting rights for the control shares is entitled to demand payment for the fair value of its shares.

A person acquires a "controlling interest" whenever a person acquires shares of a subject corporation that, but for the application of these provisions of the Nevada Revised Statutes, would enable that person to exercise (1) one-fifth or more, but less than one-third, (2) one-third or more, but less than a majority or (3) a majority or more, of all of the voting power of the corporation in the election of directors. Once an acquirer crosses one of these thresholds, shares which it acquired in the transaction taking it over the threshold and within the 90 days immediately preceding the date when the acquiring person acquired or offered to acquire a controlling interest become "control shares."

These laws may have a chilling effect on certain transactions if our articles of incorporation or bylaws are not amended to provide that these provisions do not apply to us or to an acquisition of a controlling interest, or if our disinterested stockholders do not confer voting rights in the control shares.

Nevada Regulatory Approvals. Once Wynn Resorts becomes a registered company under Nevada's gaming laws, it will be required to obtain the approval of the Nevada Gaming Commission with respect to a change in control. In addition, persons seeking to acquire control will be required to meet the requirements of the Nevada gaming authorities before assuming control. Because Desert Inn Improvement Co., a subsidiary of Wynn Resorts, is a public utility under Nevada law, the approval of the Nevada Public Utility Commission may be required before any change in the ownership structure of Wynn Resorts. These requirements may have the effect of preventing, delaying or making an acquisition of Wynn Resorts more difficult. See "Regulation and Licensing."

No Cumulative Voting. Our articles of incorporation and bylaws will not provide for cumulative voting in the election of directors.

Super-Majority Vote Requirement. Wynn Resorts' articles of incorporation will require a super-majority stockholders vote to approve any merger, conversion or exchange to which Wynn Resorts is a party and which requires stockholder approval under the Nevada Revised Statutes and for any sale, lease or exchange by Wynn Resorts of all of its property pursuant to Nevada Revised Statutes 78.565 unless the fact or event shall have occurred.

Undesignated Preferred Stock. The authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of us.

Transfer Agent and Registrar

The transfer agent and registrar for the common stock will be American Stock Transfer & Trust Company.

Listing

We intend to file an application to have our common stock approved for quotation on The Nasdaq Stock Market's National Market under the symbol "WYNN."

DESCRIPTION OF CERTAIN INDEBTEDNESS

The following discussion summarizes the material terms of certain material agreements to which certain of our subsidiaries will be parties. However, this summary does not purport to be complete and is qualified in its entirety by reference to the relevant agreements described herein.

Credit Facilities

Our subsidiary, Wynn Las Vegas, will enter into credit facilities with a syndicate of lenders and Deutsche Bank Trust Company Americas, as administrative agent, and Bank of America, N.A., as syndication agent, as follows:

- a $250 million delay-draw senior secured term loan facility under which we can borrow for a period of two years beginning on the closing date. The delay draw term loan facility will mature seven years after the closing date, and will require quarterly principal payments, scheduled to begin after Le Rêve opens; and
- a $750 million senior secured revolving facility under which we can borrow for a period of six years beginning on the closing date. The revolving credit facility will mature six years after the closing date. We may use up to $25 million of the revolving credit facility for letters of credit, and after Le Rêve opens, we may use up to $10 million of the revolving credit for swing line loans.

When borrowings outstanding under our revolving facility equal or exceed $200 million, the lenders' agent will have the right to convert $100 to $400 million of the amounts outstanding under our revolving loan to term loans, on the same terms and conditions as those made under our delay draw term loan facility. The commitments of the lenders to make revolving loans to us will be permanently reduced by the amount of any revolving loans that are converted to term loans, and the outstanding loans under our delay draw term loan facility will be correspondingly increased.

We will use the proceeds of the credit facilities to finance development and construction of Le Rêve and to meet our pre-opening expenses and debt service obligations. After Le Rêve opens, the restricted entities may use any remaining revolving credit availability for operating expenses and other general corporate purposes.

Interest and Fees

Subject to certain exceptions, amounts borrowed under our credit facilities will bear interest, as follows:

- before Le Rêve opens, our borrowings will bear interest at the prime rate or reserve adjusted Eurodollar Rate, as we elect, plus, in either case, 4.00% per annum (or, if our senior secured long term indebtedness is initially rated at least BB- and Ba3 by Standard & Poor's Rating Services and Moody's Investors Service, respectively, 3.50% per annum); and
- after Le Rêve opens, the interest rate will be reduced to the prime rate or reserve adjusted Eurodollar Rate, as we elect, plus, in either case, a margin based on our leverage ratio.

We will be required to obtain protection through interest rate swaps, caps or other similar arrangements against increases in the interest rates with respect to not less than $125 million of term loan availability, and up to $200 million of revolving credit loans that are converted in term loans.

Until Le Rêve opens, Wynn Las Vegas will pay, quarterly in arrears, 2.00% per annum on unborrowed availability under our revolving credit facility. However, if our senior secured long-term indebtedness is initially rated at least BB- and Ba3 by Standard & Poor's Rating Services and Moody's Investor Services, respectively, Wynn Las Vegas will pay 1.75% per annum rather than 2.00%. The amount Wynn Las Vegas will pay will be calculated on the daily average of the unborrowed availability under the revolving credit facility.

After Le Rêve opens, the annual fee Wynn Las Vegas will be required to pay for unborrowed amounts, if any, under our revolving credit facility will be determined by a grid based on our leverage ratio. For unborrowed amounts under our delay draw term loan facility, Wynn Las Vegas will pay, quarterly in arrears, 2.50% per annum from the closing date until December 31, 2002, 3.00% per annum from January 1, 2003 to June 30, 2003 and after June 30, 2003, 4.00% per annum, in each case, calculated based on the daily average of the unborrowed amounts under our delay draw term loan facility. If Wynn Las Vegas' senior secured long term indebtedness is initially rated at least BB- and Ba3 by Standard & Poor's Rating Services and Moody's Investor Services, respectively, those fees will be reduced to 2.00%, 2.50% and 3.50%, respectively.

Guarantees

One of our subsidiaries, a special purpose subsidiary formed to be bankruptcy-remote, will be providing $50 million to guarantee to the lenders under our credit facilities and second mortgage note holders completion in full of the construction and opening of Le Rêve, including all furniture, fixtures and equipment, the parking structure, the golf course and the availability of initial working capital. We will contribute $50 million of the net proceeds of our equity offering to that subsidiary to support its obligations under the completion guaranty. These funds will be deposited into a collateral account to be held in cash or short-term highly-rated securities, and pledged to the senior lenders and the second mortgage note holders as security for the completion guaranty, to be applied to the costs of the project, as the lenders under the credit facilities determine in accordance with the disbursement agreement. Upon the completion and opening of Le Rêve, any amounts then remaining in this account will be released to us.

Under our credit facilities, Wynn Las Vegas, its subsidiaries and certain of its affiliates will be considered restricted entities and will guarantee the obligations of Wynn Las Vegas under the credit facilities. In the event that Wynn Resorts provides guarantees of other specified indebtedness prior to meeting a prescribed leverage ratio and debt rating test, then Wynn Resorts will also be required to guarantee the credit facilities and the second mortgage notes. The obligations of each guarantor under its guarantee will be limited as necessary to reduce the risk that the guarantee would be treated as a fraudulent conveyance under applicable law. Each guarantee of the notes will be a senior secured obligation of each guarantor, secured by a security interest in certain of the guarantors' existing and future assets, and will rank pari passu in right of payment with any existing and future senior indebtedness of the guarantors. In addition, each guarantee will rank senior in right of payment to all of the existing and future subordinated indebtedness of each guarantor.

Security

Subject to certain exceptions, compliance with all applicable laws, including gaming laws and regulations, and obtaining any necessary regulatory approvals, our obligations under our

credit facilities will be secured by first priority security interests (subject to permitted liens) in the following:

- a first priority security interest in a liquidity reserve account to be funded prior to closing of the credit facilities with cash or short-term, highly-rated securities in an amount equal to $30 million, to secure the completion of the construction and opening of Le Rêve. Amounts on deposit in the liquidity reserve account will be applied to the costs of the design, construction and operation of Le Rêve as the lenders under our credit facilities determine in accordance with the disbursement agreement. After we have met earnings before interest, taxes, depreciation and amortization targets for a full fiscal year after Le Rêve opens, any remaining amounts in the liquidity reserve account will be released to us;
- a first priority pledge of all equity interests in the restricted entities to the extent permitted by applicable law;
- first ortgages on all real property constituting Le Rêve, including initially the 20-acre parcel located next to Le Rêve and the golf course parcel, as well as substantially all appurtenant rights owned by our affiliates necessary for the development, construction and operation of Le Rêve; and
- a first priority security interest in substantially all of the other existing and future assets of Wynn Las Vegas the restricted entities, subject to certain exceptions, and further subject to release of certain assets upon meeting certain maximum leverage tests and minimum credit ratings after opening).

If Wynn Resorts pledges assets to secure guarantees of other specified indebtedness prior to meeting prescribed leverage ratio and debt rating tests, then the credit facilities may be secured by liens of equal priority on the same Wynn Resorts' assets.

Our obligations under our credit facilities will also be secured by second priority security interests on the furniture, fixtures and equipment financed with the FF&E facility. See "—FF&E Facility". Our obligations under the credit facilities will not be secured by any interest in the secured account holding the proceeds of the second mortgage notes.

Prepayments

We will be required to make mandatory prepayments of indebtedness under our credit facilities from net cash proceeds of certain asset sales, equity offerings, debt offerings and insurance or condemnation proceeds received by the restricted entities. We will also be required to make mandatory payments of indebtedness under the credit facilities from a percentage of our excess cash flow, initially 75%, and decreasing based on our leverage ratio and senior debt ratings to 50%, and then to be eliminated. Wynn Las Vegas will have the option to prepay all or any portion of our indebtedness under the credit facilities at any time without premium or penalty.

Covenants

The restricted entities will be required to comply with additional negative and affirmative covenants, including, without limitation, limitations on:

- indebtedness;
- guarantees;
- restricted payments;
- mergers and acquisitions;

- negative pledges;
- liens;
- dividends and distributions;
- transactions with affiliates;
- leases;
- scope changes and modifications to material contracts;
- sales of assets; and
- capital expenditures.

Additionally, the restricted entities will be required to comply with certain financial ratios and other financial covenants such as:

- minimum fixed charge coverage;
- minimum earnings before interest, taxes, depreciation and amortization;
- total debt to earnings before interest, taxes, depreciation and amortization; and
- minimum net worth.

Conditions to Availability of Funds

The conditions to all borrowings before final completion of Le Rêve will consist of those set forth under the disbursement agreement. See "—Description of Disbursement Agreement." Borrowings of revolving loans after final completion of Le Rêve will be subject to prior written notice of borrowing, the accuracy of representations and warranties, the absence of any default or event of default and certain other customary conditions to borrowing.

Events of Default

The credit facilities will contain customary events of default, including the failure to make payments when due, defaults under other material agreements or instruments of indebtedness of specific amounts, loss of material licenses or permits (including gaming licenses), failure or inability to complete Le Rêve by the outside completion date (subject to force majeure extension), loss of material contracts, noncompliance with covenants, material breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts, ERISA, impairment of security interests in collateral, change of control and, prior to final completion of Le Rêve, specified events under the disbursement agreement, subject in some cases to applicable notice provisions and grace periods. See "—Description of Disbursement Agreement." Events of default will apply to the restricted entities.

Second Mortgage Notes

Wynn Las Vegas and Wynn Capital, referred to as the issuers, will enter into an indenture among themselves and certain restricted entities and , as trustee, pursuant to which the issuers will issue second mortgage notes with a maximum aggregate principal amount of $350 million. The second mortgage notes will:

- be general obligations of the issuers;
- be secured by a security interest in certain of the existing and future assets of Valvino, the issuers and certain other restricted entities and, in certain limited circumstances, may be secured by a security interest in certain of the existing and future assets of Wynn Resorts;

- rank pari passu in right of payment to all of the issuers' existing and future senior indebtedness, including borrowings under the credit facilities;
- rank senior in right of payment to all of the issuers' existing and future subordinated indebtedness; and
- be unconditionally guaranteed by the guarantors, which may, in certain limited circumstances, include Wynn Resorts. See "—Guarantees."

Interest and Fees

The second mortgage notes will bear interest at a rate that will be established at the time of pricing of the second mortgage notes, which pricing is expected to occur concurrently with the pricing of the equity offering. Interest will be payable semi-annually in arrears on and , commencing on , 2002. The issuers will make each interest payment to the holders of record of the second mortgage notes on the immediately preceding and .

Interest will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Guarantees

One of our subsidiaries, a special purpose subsidiary formed to be bankruptcy-remote, will be providing $50 million to guarantee to our second mortgage note holders and the lenders under our credit facilities completion in full of the construction and opening of Le Rêve, including all furniture, fixtures and equipment, the parking structure, the golf course and the availability of initial working capital. We will contribute $50 million of the net proceeds of our equity offering to that subsidiary to support its obligations under the completion guaranty. These funds will be deposited into a collateral account to be held in cash or short-term highly-rated securities, and pledged to the second mortgage note holders on a second priority basis as security for the completion guaranty, to be applied to the costs of the project as the lenders under our credit facilities determine in accordance with the disbursement agreement. Upon the completion and opening of Le Rêve, any amounts then remaining in this account will be released to us.

The obligations of Wynn Las Vegas under the second mortgage notes will also be jointly and severally guaranteed by the other restricted entities. In the event that Wynn Resorts incurs indebtedness or provides guarantees of other specified indebtedness prior to meeting a prescribed leverage ratio and debt rating test, then Wynn Resorts will also be required to guarantee the second mortgage notes. The obligations of each guarantor under its guarantee will be limited as necessary to reduce the risk that the guarantee would be treated as a fraudulent conveyance under applicable law. Each guarantee of the notes will be a senior secured obligation of each guarantor, secured by a second priority security interest in certain of the guarantors' existing and future assets, and will rank pari passu in right of payment with any existing and future senior indebtedness of the guarantors. In addition, each guarantee will rank senior in right of payment to all of the existing and future subordinated indebtedness of each guarantor.

Security

Subject to certain permitted liens, the second mortgage notes will be secured by, among other things:

- a first priority, exclusive security interest in the net proceeds of the second mortgage notes deposited into escrow pending the closing of this offering;
- a second priority security interest in a liquidity reserve account to be funded prior to closing of the credit facilities with cash or short-term, highly-rated securities in an amount equal to $30 million, to secure the completion of the construction and opening of Le Rêve. Amounts on deposit in the liquidity reserve account will be applied to the costs of the design, construction and operation of Le Rêve as the lenders under our credit facilities determine in accordance with the disbursement agreement. After we have met earnings before interest, taxes, depreciation and amortization targets for a full fiscal year after Le Rêve opens, any remaining amounts in the liquidity reserve account will be released to us;
- a second priority pledge of the equity interests of the issuers and certain other restricted entities;
- a second priority security interest in substantially all of the other existing and future assets of the issuers and certain other restricted entities, and subject to certain exceptions, and further subject to release of certain assets upon meeting certain maximum leverage tests and minimum credit ratings after opening);
- second mortgages on all real property constituting Le Rêve, including initially the 20-acre parcel located next to Le Rêve and the golf course parcel, as well as substantially all appurtenant rights owned by our affiliates necessary for the development, construction and operation of Le Rêve; and
- third priority security interests on the furniture, fixtures and equipment financed with the FF&E facility. See "—FF&E Facility."

If Wynn Resorts pledges assets to secure guarantees of other specified indebtedness prior to meeting prescribed leverage ratio and debt rating tests, then the second mortgage notes may be secured by second priority liens on the same Wynn Resorts' assets.

Optional Redemption

At any time prior to , 2005, the issuers may redeem up to a percentage to be agreed upon of the aggregate principal amount of the second mortgage notes at a specified redemption price; provided that certain conditions are satisfied. The second mortgage notes otherwise are not redeemable prior to , 200 .

After , 200 , the issuers may redeem all or a part of the second mortgage notes upon not less than 30 nor more than 60 days' notice, at certain specified redemption prices based on timing of the redemption.

Repurchase at the Option of the Holders of Second Mortgage Notes

Following the occurrence of a change of control under the second mortgage notes, the issuers will be required to offer to repurchase the second mortgage notes at a purchase price equal to 101% of the principal amount of the second mortgage notes, plus any accrued and unpaid interest to the date of repurchase.

The issuers will be required to offer to repurchase the second mortgage notes at a purchase price equal to the principal amount of the second mortgage notes, plus any accrued

and unpaid interest to the date of repurchase, with the net cash proceeds of certain asset sales.

Gaming Redemption

The second mortgage notes may be redeemed by the issuers in certain instances where a gaming authority requires a holder or beneficial owner of the second mortgage notes to be licensed, qualified or found suitable under any applicable gaming law and the holder or beneficial owner (1) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so, or such lesser period as required by the gaming authority, or (2) is notified by a gaming authority that it will not be licensed, qualified or found suitable.

Mandatory Redemption

The issuers will not be required to make mandatory redemption or sinking fund payments with respect to the second mortgage notes.

Covenants

The second mortgage notes will contain additional affirmative and negative covenants applicable to the issuers and certain other restricted entities, including, without limitation, limitations on:

- restricted payments;
- indebtedness;
- issuance of preferred stock;
- liens;
- dividend and other payment restrictions affecting subsidiaries;
- merger, consolidation or sale of assets;
- designation of restricted and unrestricted subsidiaries;
- transactions with affiliates;
- construction disbursements and completion of the project;
- use of proceeds;
- insurance;
- sale and leaseback transactions;
- lines of business;
- activities of Wynn Capital and the completion guarantor;
- issuances and sales of equity interests in wholly owned subsidiaries; and
- amendments to certain agreements and collateral documents.

Events of Default

The indenture for the second mortgage notes will contain customary events of default, including the failure to make payments when due, defaults under other material agreements or instruments of indebtedness of specific amounts, loss of material licenses or permits (including gaming licenses), failure or inability to complete Le Rêve by the outside completion date (subject to force majeure extension), loss of material contracts, noncompliance with covenants, material breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts, impairment of security interests in collateral, and, prior to final completion of Le Rêve, specified events under the disbursement agreement, subject in some cases to applicable notice provisions and grace periods. See "— Description of Disbursement Agreement." Events of default will apply to the restricted entities.

Intercreditor Agreement

A representative of the lenders under our credit facilities and the trustee will enter into an intercreditor agreement with us that will govern the relations between the note holders and those lenders. The intercreditor agreement will provide that the second mortgage note holders will have a first priority security interest in, or claim against, the net proceeds of the second mortgage note offering deposited into a secured account pending disbursement of such amounts in accordance with the terms of the disbursement agreement. Additionally, the lenders under the credit facilities will likely have a first priority security interest in, or claim against the collateral pledged by us.

The intercreditor agreement will establish certain provisions and agreements concerning the exercise of remedies by the second mortgage note holders and the lenders against their respective collateral. As a result, the second mortgage note holders will have limited rights to force a sale of any of the collateral or otherwise exercise any of the remedies available to a secured creditor in connection with the collateral, other than the collateral in which the credit facilities lenders do not have an interest, unless or until the credit facilities are paid in full. Applicable law, including gaming laws and regulations, will also impose restrictions on the ability of the second mortgage note holders and the lenders under our credit facilities to enforce the remedies of a secured creditor.

Disbursement Agreement

Wynn Las Vegas will enter into a disbursement agreement with Deutsche Bank Trust Company Americas, as the bank agent, [ ], as the mortgage note trustee, and [ ], as the disbursement agent. The following summary of the material provisions of the disbursement agreement is not meant to be complete and you should review the disbursement agreement for a complete statement of its terms and conditions, including the definitions of terms used below. Although the FF&E lenders are not party to the disbursement agreement, the funding conditions with respect to the FF&E financing are expected to be similar in many respects to those set forth in the disbursement agreement. See "Description of Certain Indebtedness—FF&E Facility."]

General

The disbursement agreement will set forth our material obligations to construct and complete Le Rêve and will establish a line item budget and a schedule for construction of Le Rêve. The disbursement agreement also will establish the conditions to, and the relative sequencing of, the making of disbursements from the proceeds of the credit facilities and the second mortgage notes, and will establish the obligations of the bank agent and the second

mortgage note trustee to make disbursements under the credit facilities and the obligation of the second mortgage notes trustee to release funds from the second mortgage notes proceeds account upon satisfaction of such conditions. The disbursement agreement further will set forth the mechanics for approving change orders and amendments to the project budget and the schedule for the construction period. Finally, the disbursement agreement will include certain representations, warranties, covenants and events of default that are common to our credit facilities and second mortgage notes.

Under the disbursement agreement, we will only be permitted to use the proceeds of the credit facilities and the second mortgage notes to pay for project costs related to Le Rêve, excluding those FF&E costs that are financed under the FF&E facility.

Funding Order

The disbursement agreement will set forth the sequencing order in which funds from the various sources will be made available to us.

We expect to commence construction of Le Rêve in September 2002, and we have incurred, and prior to the initial disbursement from the second mortgage notes proceeds account will continue to incur, significant costs in connection with Le Rêve. Pursuant to the disbursement agreement, the construction consultant will confirm that such costs were incurred within the parameters set forth in the approved project budget.

Accounts

In order to implement the funding of disbursements, the disbursement agreement will call for the establishment of certain accounts, each of which will be pledged to the lenders under the credit facilities and the holders of second mortgage notes, except that the secured account holding the proceeds of the second mortgage notes will be pledged to the second mortgage note holders only. Each time Wynn Las Vegas receives funds from its credit facilities, the second mortgage notes proceeds account or other sources for the development and construction of Le Rêve, those funds must be deposited in the appropriate accounts and, subject to the conditions to disbursement, be disbursed to pay for the development and construction of Le Rêve.

Funding Conditions

We will be required to satisfy conditions precedent before we are permitted to receive funds from the disbursement accounts. These conditions will include, among others:

- our delivery of a disbursement request and certificate certifying as to, among other things:

  (1) the application of the funds to be disbursed,

  (2) the substantial conformity of construction undertaken to date with the plans and specifications, as amended from time to time in accordance with the disbursement agreement,

  (3) the continued expectation that the construction of Le Rêve will be completed by August 31, 2005,

  (4) the use of funds in accordance with the budgeted amounts, as adjusted from time to time in accordance with the disbursement agreement,

  (5) the sufficiency of remaining funds (net of the completion guaranty and liquidity reserve, and contingency amounts allocable to the remaining portion of the project) to complete Le Rêve, and

  (6) compliance with line item budget allocations (as such allocations may be amended from time to time in accordance with the disbursement agreement), taking into account allocations for contingencies;

- delivery by the construction consultant and the contractors and subcontractors of certificates corroborating various matters set forth in our disbursement request and certificate;
- absence of a default or event of default under the credit facilities and the second mortgage notes documents;
- all of the credit documentation and each other material agreement for the development and construction of the project being in full force and effect;
- our representations and warranties being true and correct in all material respects;
- our receipt of the governmental approvals then required;
- our delivery to the disbursement agent of the acknowledgments of payment and lien releases required under the disbursement agreement;
- procurement of all required title insurance policies, commitments and endorsements insuring that the project continues to be subject only to permitted liens; and
- the absence of any event or circumstance (including an adverse gaming determination) that has caused or could reasonably be expected to cause a material adverse effect.

Prior to borrowing any amounts under our credit facilities or receiving any disbursements from the secured account holding the proceeds of the second mortgage notes, we plan to use a portion of the proceeds of this offering, and our other available funds, to commence construction of Le Rêve. As a condition to borrowing under our credit facilities or receiving disbursements from the secured account, we will be required to submit evidence acceptable to the construction consultant that the construction of Le Rêve has been completed to that point in accordance with our plans and specifications, on budget and on schedule.

Changes to Construction Budget and Schedule

The disbursement agreement will contain guidelines for the construction consultant and the disbursement agent to permit amendments to the budget and the plans and specifications. These conditions will generally be the same as conditions to disbursement that relate to the project and the budget.

The guidelines will only permit increases to any line item category to the extent of the sum of:

- savings in a different category;
- allocation of previously "unallocated contingency," subject to a specified minimum balance required, from time to time, to be maintained in the "unallocated contingency" line item; and
- use of additional Le Rêve revenues or additional company equity and other amounts, to the extent deposited in the appropriate disbursement agreement accounts.

We may, from time to time, amend the project schedule to extend the completion date, but not beyond August 31, 2005, by delivering to the disbursement agent a certificate describing the amendment and complying with the conditions set forth above with respect to the changes in the project budget that will result from the extension of the completion date.

Covenants

The disbursement agreement contains various affirmative covenants that we are obligated to comply with. Such covenants include the following:

- to use the proceeds of the credit facilities and the second mortgage notes only to pay project costs in accordance with the project budget and the disbursement agreement;
- to construct Le Rêve diligently and substantially in accordance with the plans and specifications (as the same may be amended from time to time in accordance with the disbursement agreement);
- to construct, maintain and operate Le Rêve in accordance in all material respects with all applicable laws and procure, maintain and comply with all required governmental approvals in all material respects; and
- to maintain and comply with the required insurance policies. See "Insurance Requirements."

The disbursement agreement will also require us to comply with negative covenants. These covenants will limit, among other things, the restricted entities' ability to:

- waive or terminate any material right under: the financing agreements, the construction contract guaranty, other material project documents or any required governmental approval;
- enter into new material project documents unless we provide certifications assuring that the documents comply with the procedures set forth in the disbursement agreement (for example, new contracts with contractors or suppliers will not be permitted unless the proposed work is consistent with the previously approved project, the overall budget and the completion schedule);
- implement any material change in the plans and specifications or any change order under the construction contracts or other contracts, if the change or change order:

(1) requires an amendment to the project budget, unless we comply with the procedures for amending the project budget;

(2) will cause the plans and specifications to no longer comply with certain parameters;

(3) could reasonably be expected to delay completion beyond the anticipated completion date;

(4) is not permitted by a project document; or

(5) could reasonably be expected to adversely affect our compliance with legal requirements and governmental approvals;

- amend the project budget or the project schedule except in accordance with the procedures set forth in the disbursement agreement; or
- release any hazardous substance in violation of any legal requirement or governmental approval if it could reasonably be expected to have a material adverse effect.

Exercise of Remedies on Default

The disbursement agreement will provide that, upon the occurrence of an event of default under the credit facilities or the second mortgage notes, the exercise of remedies shall be subject to the intercreditor agreement. Subject to the restrictions contained in the intercreditor agreement, the remedies under the disbursement agreement include:

- termination of the obligation to make any further disbursements;
- taking possession of Le Rêve and completing its construction and/or operating and maintaining Le Rêve, or appointing a trustee or receiver to do the same;
- setting off and applying all cash and securities on deposit in any account with the disbursement agent to our obligations under the credit facilities and the indenture; and
- subject to certain limitations, assuming our rights under the project documents.

The disbursement agreement will terminate on or about the date on which completion occurs.

FF&E Facility

We expect to enter into an agreement for an FF&E facility in a principal amount of $150 million. However, because we have not yet obtained a commitment for the FF&E facility, the terms of the anticipated FF&E facility are not yet known. We expect that our FF&E facility will be secured by specific fixed assets financed by that facility, including gaming equipment and devices such as slot machines. Such assets will also secure our credit facilities on a second priority basis and our obligations under the second mortgage notes on a third priority basis.

Indebtedness Related to Corporate Jet

Our subsidiary, World Travel, LLC, as borrower, and Valvino, as guarantor, have entered into a secured loan arrangement with Bank of America, N.A., to provide for a $28.5 million loan to World Travel. The loan will mature on March 1, 2007, with payments of $158,333 due each month prior to maturity.

The loan bears interest at an annual rate equal to one, two, three or six month LIBOR plus 2.50%, and is secured by an aircraft mortgage on World Travel's Bombadier Global Express aircraft.

SHARES ELIGIBLE FOR FUTURE SALE

Sales of Restricted Securities

Before this offering, there has been no public trading market for our common stock, and we cannot predict the effect, if any, that market sales of shares of our common stock or the availability of shares of our common stock for sale will have on the market price of our common stock prevailing from time to time. Nevertheless, sales of substantial amounts of our common stock in the public market could adversely affect the market price of our common stock and could impair its future ability to raise capital through the sale of its equity securities.

Upon the completion of this offering, we will have shares of its common stock outstanding, assuming no exercise of the underwriters' over-allotment option. All of the shares sold in this offering will be freely tradable, except that any shares purchased by our affiliates may only be sold in compliance with the applicable limitations of Rule 144. The remaining shares of our common stock are "restricted securities" as defined under Rule 144. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rules 144, 144(k) or 701 under the Securities Act. These rules are summarized below.

Subject to the provisions of Rules 144, 144(k) and 701, shares of our common stock will be available for sale in the public market upon the expiration of the 180-day lock-up period.

If our stockholders sell substantial amounts of our common stock in the public market following this offering, the prevailing market price of our common stock could decline. Furthermore, sales of substantial amounts of our common stock in the public market after contractual and legal restrictions lapse could adversely affect the prevailing market price of the common stock and our ability to raise equity capital in the future.

Rule 144

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who has beneficially owned restricted shares for at least one year including the holding period of any prior owner except an affiliate would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of common stock then outstanding; or
- the average weekly trading volume of the common stock as reported on all national exchanges during the four calendar weeks preceding the filing of a Form 144 with respect to such sale.

Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 144(k)

Under Rule 144(k), a person who is not deemed to have been our affiliate at any time during the three months preceding a sale, and who has beneficially owned the shares proposed to be sold for at least two years including the holding period of any prior owner except an affiliate, is entitled to sell such shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. The Securities Act defines affiliates to be persons that directly, or indirectly through one or more intermediaries,

control, or are controlled by, or are under common control with, Wynn Resorts. These persons typically include our executive officers and directors.

Rule 701

In general, under Rule 701, any of our employees, directors, officers, consultants or advisors who purchase shares from us under a stock option plan or other written agreement can resell those shares 90 days after the effective date of this offering, subject to lock-up agreements, in reliance on Rule 144, but without complying with the holding period, public information, volume limitation or notice provisions of Rule 144, so long as they are not affiliates of ours. If they are an affiliate, they are eligible to resell the shares 90 days after the effective date of this offering, subject to lock-up agreements, in reliance on Rule 144 but without compliance with the holding period contained in Rule 144.

Stock Options

Immediately after this offering, we intend to file a registration statement on Form S-8 under the Securities Act covering shares of common stock reserved for issuance under our stock option plan. Shares registered under that registration statement will, upon the optionee's exercise and depending on vesting provisions and Rule 144 volume limitations applicable to our affiliates, be available for resale in the public market.

Lock-up Agreements

We, all of our officers and directors and other stockholders, excluding Baron Asset Fund, have agreed not to offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any of their shares of our common stock or any equity securities convertible into or exercisable or exchangeable for shares of our common stock; or enter into any swap or other arrangement that transfers to another, in whole or in part, any economic consequences of ownership of our common stock during the period ending 180 days after the date of this prospectus without the prior written consent of Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC, on behalf of the underwriters. Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC have advised us that they have no present intention to release any shares subject to lockup agreements. In considering whether to release any shares subject to a lockup agreement, Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC would consider, among other factors, the particular circumstances surrounding the request, including, but not limited to, the number of shares to be released, the effect of the released shares on the market for our common stock and the hardship of the person requesting the waiver.

U.S. FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a general discussion of certain U.S. federal income and estate tax consequences of the ownership and disposition of Wynn Resorts' common stock by a person that is not a "United States person" for U.S. federal income tax purposes (a "non-U.S. holder"). For this purpose, a "United States person" is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, an estate, the income of which is subject to U.S. federal income taxation regardless of its source, or a trust if (1) a U.S. court is able to exercise primary supervision over the trust's administration and (2) one or more United States persons have the authority to control all of the trust's substantial decisions. This discussion does not consider specific facts and circumstances that may be relevant to any particular non-U.S. holder's tax position. Special rules may apply to certain non-U.S. holders that are subject to special treatment under the Internal Revenue Code of 1986, as amended, such as dealers in securities, banks, insurance companies, tax-exempt organizations, persons holding their shares as part of a "straddle," "hedge," or "conversion transaction," persons who acquire shares as compensation, "controlled foreign corporations," "passive foreign investment companies," "foreign personal holding companies," and

corporations that accumulate earnings to avoid U.S. federal income tax. This discussion is limited to certain U.S. federal income tax consequences to beneficial owners of Wynn Resorts' common stock who hold Wynn Resorts' common stock as a capital asset. Except where otherwise explicitly stated, it does not address the tax consequences of any aspect of state, local, or foreign law or the tax consequences to persons who are former citizens or long-term residents of the United States or to persons holding Wynn Resorts' common stock through a partnership or other pass-through entity. If a partnership holds Wynn Resorts' common stock, the tax treatment of a partner generally will depend on the status of the partner and the activities of the partnership.

Accordingly, each non-U.S. holder is urged to consult its own tax advisor with respect to the U.S. federal tax consequences of the ownership and disposition of common stock, as well as any tax consequences that may arise under the laws of any state, municipality, foreign country or other taxing jurisdiction.

Dividends

Dividends paid to a non-U.S. holder of Wynn Resorts' common stock ordinarily will be subject to a 30% withholding tax, unless the non-U.S. holder (1) provides us or our paying agent, as the case may be, with a properly executed Form W-8BEN (or a suitable substitute form) claiming a reduction in the rate of withholding pursuant to an applicable income tax treaty; (2) provides us or our paying agent, as the case may be, with a properly executed Form W-8ECI (or a suitable substitute form) providing a U.S. tax identification number and stating the dividends are effectively connected with the beneficial owner's conduct of a trade or business in the United States; or (3) in the case of payments made outside the United States with respect to an offshore account, complies with certain documentary evidence procedures, directly or, under certain circumstances, through an intermediary.

If a non-U.S. holder is engaged in a trade or business in the United States and our dividends are effectively connected with the conduct of such trade or business and, where an income tax treaty applies, are attributable to a U.S. permanent establishment, the non-U.S. holder will be subject to federal income tax on the dividends on a net basis. In addition, if the non-U.S. holder is a foreign corporation, it may be subject to a branch profits tax equal to 30% of its effectively connected earnings and profits for that taxable year, subject to adjustment, unless it qualifies for a lower rate under an applicable income tax treaty.

Gain on Disposition of Common Stock

A non-U.S. holder generally will not be subject to U.S. federal income tax in respect of a gain realized on a disposition of Wynn Resorts' common stock, provided that (1) the gain is not effectively connected with a trade or business conducted by the non-U.S. holder in the United States, (2) in the case of a non-U.S. holder who is an individual, such holder is present in the United States for fewer than 183 days in the taxable year of the sale and other conditions are met and (3) if Wynn Resorts is a "United States real property holding corporation" (a "USRPHC"), Wynn Resorts' common stock is regularly traded at the time of disposition and other conditions described below are met.

Because for U.S. federal income tax purposes Wynn Resorts is now and probably will continue to be a USRPHC, a non-U.S. holder could be subject to tax on any gain realized on a disposition of Wynn Resorts' common stock and to 10% withholding (creditable against such tax liability) on the gross amount realized ("FIRPTA tax and withholding"). We believe, however, that Wynn Resorts' common stock will be considered "regularly traded" on an established securities market because we expect it to be traded on The Nasdaq Stock Market's National Market and to be regularly quoted by brokers and/or dealers making a market in Wynn Resorts' common stock. If Wynn Resorts' common stock is regularly traded at the time of the disposition, withholding generally will not be required and a non-U.S. holder who did not own more than 5% of the value of Wynn Resorts' common stock, actually or constructively, at any time during the shorter of the five-year period preceding the disposition or the non-U.S. holder's holding period, should not be subject to U.S. federal income tax on any gain realized on the disposition of Wynn Resorts' stock provided that clauses (1) and (2) above are also satisfied. It is possible, however, that, because of its concentrated ownership, Wynn Resorts' common stock will not be considered regularly traded despite being quoted on The Nasdaq Stock Market's National Market and regularly quoted by market makers. As a result, a non-U.S. holder could be subject to FIRPTA tax and withholding on a disposition of the common stock.

If a non-U.S. holder is engaged in the conduct of a trade or business in the United States, gain on the disposition of Wynn Resorts' common stock that is effectively connected with the conduct of such trade or business and, where an income tax treaty applies, is attributable to a U.S. permanent establishment, will be taxed on a net basis at applicable graduated individual or corporate rates. Effectively connected gain of a foreign corporation may, under certain circumstances, be subject as well to a branch profits tax at a rate of 30% or a lower applicable treaty rate.

Federal Estate Taxes

Wynn Resorts' common stock owned or treated as being owned by a non-U.S. holder at the time of death will be included in that holder's gross estate for U.S. federal estate tax purposes, unless an applicable estate tax treaty provides otherwise. Although the U.S. federal estate tax generally has been repealed for decedents dying in 2010, the repeal expires and, unless extended by new legislation, the U.S. federal estate tax will be reinstated beginning January 1, 2011.

U.S. Information Reporting Requirements and Backup Withholding Tax

U.S. information reporting on Form 1099 and backup withholding tax should not apply to dividends paid on Wynn Resorts' common stock to a non-U.S. holder, provided that the non-U.S. holder provides Wynn Resorts or its payor, as the case may be, with a properly executed Form W-8BEN (or satisfies certain certification documentary evidence requirements

for establishing that it is a non-United States person under U.S. Treasury regulations) or otherwise establishes an exemption. Distributions on Wynn Resorts' common stock will, however, be reported to the IRS and to each non-U.S. holder on Form 1042-S.

Information reporting and backup withholding also generally will not apply to a payment of the proceeds of a sale of Wynn Resorts' common stock effected outside the United States by a foreign office of a foreign broker. However, information reporting requirements (but not backup withholding) will apply to a payment of the proceeds of a sale of Wynn Resorts' common stock effected outside the United States by a foreign office of a broker if the broker (1) is a United States person, (2) derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the United States, (3) is a "controlled

foreign corporation" as to the United States or (4) is a foreign partnership that, at any time during its taxable year, is 50% or more (by income or capital interest) owned by United States persons or is engaged in the conduct of a U.S. trade or business, unless in any such case the broker has documentary evidence in its records that the holder is a non-U.S. holder and certain conditions are met, or the holder otherwise establishes an exemption. Payment by a U.S. office of a broker of the proceeds of a sale of Wynn Resorts' common stock will be subject to both backup withholding and information reporting unless the holder certifies its non-U.S. status under penalties of perjury or otherwise establishes an exemption. Pursuant to recent tax legislation the rate of backup withholding tax is currently 30% and will be reduced to 29% on January 1, 2004 and 28% on January 1, 2006. Unless extended by new legislation, however, the 31% backup withholding tax rate will be reinstated beginning January 1, 2011.

Any amounts withheld under the backup withholding rules should be allowed as a refund or a credit against the non-U.S. holder's U.S. federal income tax liability provided the required information is furnished to the IRS.

You are urged to consult your tax advisor in determining the tax consequences to you of the purchase, ownership, and disposition of Wynn Resorts' common stock, including the application to your particular situation of the federal income tax considerations discussed above and the application of state, local, foreign, or other tax laws.

UNDERWRITING

Subject to the terms and conditions of the underwriting agreement, the underwriters named below, through their representatives Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC, have agreed to purchase from us the following respective number of shares of common stock at a public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus:

Underwriters	Number of Shares
Deutsche Bank Securities Inc.	
Bear, Stearns & Co. Inc.	
Banc of America Securities LLC	
Dresdner Kleinwort Wasserstein Securities LLC	
Total	

The underwriting agreement provides that the obligations of the several underwriters to purchase the shares of common stock offered hereby are subject to certain conditions precedent and that the underwriters will purchase all of the shares of common stock offered by this prospectus, other than those covered by the over-allotment option described below, if any of these shares are purchased.

We have been advised by the representatives of the underwriters that the underwriters propose to offer the shares of common stock to the public at the public offering price set forth on the cover of this prospectus and to dealers at a price that represents a concession not in excess of $[ ] per share under the public offering price. The underwriters may allow, and these dealers may re-allow, a concession of not more than $[ ] per share to other dealers. After the initial public offering, representatives of the underwriters may change the offering price and other selling terms.

We have granted to the underwriters an option, exercisable not later than 30 days after the date of this prospectus, to purchase up to [ ] additional shares of common stock at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus. The underwriters may exercise this option only to cover over-allotments made in connection with the sale of the common stock offered by this prospectus. To the extent that the underwriters exercise this option, each of the underwriters will become obligated, subject to conditions, to purchase approximately the same percentage of these additional shares of common stock as the number of shares of common stock to be purchased by it in the above table bears to the total number of shares of common stock offered by this prospectus. We will be obligated, pursuant to the option, to sell these additional shares of common stock to the underwriters to the extent the option is exercised. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

The underwriting discounts and commissions per share are equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting discounts and commissions are [ ]% of the initial public offering price. We have agreed to pay the underwriters the following discounts and commissions, assuming either no exercise or full exercise by the underwriters of the underwriters' over-allotment option:

		Total Fees	
	Fee per Share	Without Exercise of Over-allotment Option	With Full Exercise of Over-allotment Option
Discounts and commissions paid by us	$	$	$

In addition, we estimate that our share of the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately $[ ].

We have agreed to indemnify the underwriters against some specified types of liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect of any of these liabilities.

We, all of our officers and directors and all of our other stockholders, excluding Baron Asset Fund, have agreed not to offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any of their shares of our common stock or any equity securities convertible into or exercisable or exchangeable for shares of our common stock; or enter into any swap or other arrangement that transfers to another, in whole or in part, any economic consequences of ownership of our common stock during the period ending 180 days after the date of this prospectus without the prior written consent of Deutsche Bank Securities, Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC, the representatives on behalf of the underwriters.

In connection with the offering, the underwriters may purchase and sell shares of our common stock in the open market. These transactions may include short sales, purchases to cover positions created by short sales and stabilizing transactions.

Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. Covered short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares of common stock from us in the offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are any sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if underwriters are concerned that there may be downward pressure on the price of the shares in the open market prior to the completion of the offering.

Stabilizing transactions consist of various bids for or purchases of our common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may impose a penalty bid. This occurs when a particular underwriter repays to the other underwriters a portion of the underwriting discount received by it because the representatives of the underwriters have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions may have the effect of preventing or slowing a decline in the market price of our common stock. Additionally, these purchases, along with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the New York Stock Exchange, in the over-the-counter market or otherwise.

At our request, the underwriters have reserved for sale at the initial public offering price up to [ ] shares of our common stock being sold in this offering for our vendors, employees, family members of employees, customers and other third parties. The number of

shares of our common stock available for the sale to the general public will be reduced to the extent these reserved shares are purchased. Any reserved shares not purchased by these persons will be offered by the underwriters to the general public on the same basis as the other shares in this offering.

A prospectus in electronic format may be made available on Internet web sites maintained by one or more of the lead underwriters of this offering and may be made available on web sites maintained by other underwriters. The representatives may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. The representatives may allocate shares of common stock to underwriters that may make Internet distributions on the same basis as other allocations. In addition, shares of common stock may be sold by the underwriters to securities dealers who may resell shares of common stock to online brokerage account holders. Other than the prospectus in electronic format, the information on any underwriter's web site and any information contained in any other web site maintained by an underwriter is not part of the prospectus or the registration statement of which the prospectus forms a part.

Pricing of this Offering

Prior to this offering, there has been no public market for our common stock. Consequently, the initial public offering price of our common stock will be determined by negotiation among us and the representatives of the underwriters. The primary factors that will be considered in determining the public offering price include:

- prevailing market conditions;
- our results of operations in recent periods;
- the present stage of our development;
- the market capitalizations and stages of development of other companies that we and the representatives of the underwriters believe to be comparable to our business; and
- estimates of our business potential.

Deutsche Bank Trust Company Americas, an affiliate of Deutsche Bank Securities, Inc., will act as the sole administrative agent and as a lender under the Issuers' new credit facility and will receive certain fees for its services. In addition, Deutsche Bank Securities, Inc. will act as joint advisor, joint book-running manager and joint lead-arranger in connection with the credit facilities and will receive certain fees for its services.

Bear Stearns Corporate Lending, Inc., an affiliate of Bear, Stearns & Co. Inc., will act as documentation agent and as a lender under our credit facilities and will receive certain fees for its services. In addition, Bear Stearns Corporate Lending, Inc. will act as joint advisor, joint book-running manager and arranger in connection with our credit facilities and will receive certain fees for its services.

Bank of America, N.A., an affiliate of Banc of America Securities LLC, will act as a lender under the credit facilities and will receive certain fees for its services. In addition, Banc of America Securities LLC will act as sole syndication agent and as joint advisor, joint book-running manager and joint lead-arranger in connection with the credit facilities and will receive certain fees for its services. See "Description of Other Indebtedness—Bank Credit Facility."

Some of the underwriters or their affiliates have provided investment and commercial banking services to us and our subsidiaries and our affiliates in the past and may do so in the future. They receive customary fees and commissions for these services.

LEGAL MATTERS

Selected legal matters in connection with this offering will be passed upon for Wynn Resorts by Irell & Manella LLP, Los Angeles, California and for the underwriters by Latham & Watkins, Los Angeles, California. Certain matters of Nevada law, including the validity of the common stock offered hereby, will be passed upon for us by Schreck Brignone Godfrey, Las Vegas, Nevada.

EXPERTS

The financial statements of Valvino Lamore, LLC and subsidiaries (a development stage company) as of December 31, 2001 and 2000, and for the year ended December 31, 2001 and the period from inception (April 21, 2000) to December 31, 2000, included in this prospectus and the related financial statement schedules included elsewhere in the registration statement have been audited by Deloitte & Touche LLP, independent auditors, as stated in their reports appearing herein and elsewhere in the registration statement, and have been so included in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

INDEPENDENT ACCOUNTANTS

In May, 2002, Valvino decided to no longer engage Arthur Andersen LLP ("Andersen") as its independent public accountants. The reports of Andersen on the financial statements of Valvino for the past two fiscal years contained no adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principle. Through the present date, there have been no disagreements between Valvino and Andersen on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Andersen, would have caused Andersen to make reference to the subject matter thereof in its report on Valvino's financial statements for such periods. Through the present date, there have been no reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K).

Valvino named Deloitte & Touche LLP ("Deloitte & Touche") as its new independent accountants in May, 2002. Prior to their appointment as independent accountants, neither Valvino nor anyone acting on its behalf, consulted with Deloitte & Touche regarding the application of accounting principles to a specified transaction or the type of audit opinion that might be rendered on Valvino's financial statements.

WHERE YOU CAN FIND MORE INFORMATION

Wynn Resorts has filed with the Securities and Exchange Commission, referred to as the SEC, a registration statement on Form S-1 with respect to the common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules, which are part of the registration statement. The rules and regulations of the SEC allow Wynn Resorts to omit various information about Wynn Resorts and its capital stock. For further information with respect to Wynn Resorts and its common stock, we refer you to the registration statement and exhibits and schedules filed as part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other documents are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. Any document Wynn Resorts files

may be read and copied at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. Wynn Resorts' filings with the SEC are also available to the public from the SEC's Web site at http://www.sec.gov.

Wynn Resorts does not currently file periodic reports, proxy statements or other information with the SEC. However, upon completion of this offering, Wynn Resorts will become subject to the information and periodic reporting requirements of the Securities Exchange Act, as amended, and, accordingly, will file periodic reports, proxy statements and other information with the SEC. Such periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room, and the Web site of the SEC referred to above.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

INDEPENDENT AUDITORS' REPORT

To the Members of Valvino Lamore, LLC and Subsidiaries:

We have audited the accompanying consolidated balance sheets of Valvino Lamore, LLC and subsidiaries (a development stage company) as of December 31, 2001 and 2000, and the related consolidated statements of operations, members' equity, and cash flows for the year ended December 31, 2001 and for the period from inception (April 21, 2000) to December 31, 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, such financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2001 and 2000, and the consolidated results of its operations and its cash flows for the year ended December 31, 2001 and for the period from inception to December 31, 2000, in conformity with accounting principles generally accepted in the United States of America.

Deloitte & Touche LLP

Las Vegas, Nevada
June 6, 2002

VALVINO LAMORE, LLC AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONSOLIDATED BALANCE SHEETS

(In thousands)

	March 31, 2002	December 31, 2001	December 31, 2000
	(Unaudited)		
ASSETS			
Current Assets			
Cash and cash equivalents	$ 34,239	$ 39,271	$ 64,469
Restricted cash	2,311	524	—
Receivables, net	218	202	877
Due from related parties, current	662	332	80
Inventories	263	284	322
Prepaid expenses and other	907	894	813
Total Current Assets	38,600	41,507	66,561
Property and equipment, net	334,876	337,464	313,022
Water rights	6,400	6,400	—
Due from related parties, net of current	2,161	2,376	7,563
Trademark	1,000	1,000	—
Other assets	2,994	2,041	1,321
Total Assets	$ 386,031	$ 390,788	$ 388,467
LIABILITIES AND MEMBERS' EQUITY			
Current Liabilities			
Accounts payable	$ 1,656	$ 2,071	$ 575

Accrued expenses	2,194	1,873	4,117
Current portion of long-term debt	36	35	32
Total Current Liabilities	3,886	3,979	4,724
Long-term debt	282	291	326
Members' Equity			
Contributed capital	412,572	412,572	392,572
Deficit accumulated from inception during the development stage	(30,709)	(26,054)	(9,155)
	381,863	386,518	383,417
Total Liabilities and Members' Equity	$ 386,031	$ 390,788	$ 388,467

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

VALVINO LAMORE, LLC AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except share data)

	Three Months Ended March 31, 2002	Three Months Ended March 31, 2001	Year Ended December 31, 2001	From Inception to December 31, 2000	From Inception to March 31, 2002
	(Unaudited)	(Unaudited)			(Unaudited)
Revenues					
Airplane lease	$ 69	$ —	$ 838	$ —	$ 907
Art gallery	65	—	35	—	100
Retail	48	—	27	—	75
Water	2	—	18	—	20
Total Revenue	184	—	918	—	1,102
Expenses					
Pre-opening costs	2,534	2,092	10,980	4,522	18,036
Depreciation and amortization	2,122	1,823	7,979	3,681	13,782
Loss on sale of fixed assets	62	49	394	—	456
Selling, general & administrative expenses	138	77	376	—	514
Facility closure expenses	—	328	373	1,206	1,579
Cost of water	2	—	40	—	42
Cost of retail sales	30	—	9	—	39
Loss from incidental operations	107	—	—	1,163	1,270
Total Expenses	4,995	4,369	20,151	10,572	35,718
Operating Loss	(4,811)	(4,369)	(19,233)	(10,572)	(34,616)
Other Income/(Expense)					
Interest expense, net of amounts capitalized	(6)	(7)	(28)	(17)	(51)
Interest income	162	889	2,362	1,434	3,958
Other Income, net	156	882	2,334	1,417	3,907
Net loss accumulated during the development stage	$ (4,655)	$ (3,487)	$ (16,899)	$ (9,155)	$ (30,709)
Weighted Average Shares Outstanding	207,692	207,692	202,685	200,000	205,894
Loss Per Share—Basic and Diluted	$ (22.41)	$ (16.79)	$ (83.38)	$ (45.78)	$ (149.15)

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

VALVINO LAMORE, LLC AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY

(In thousands, except share data)

	Shares Outstanding	Stephen A. Wynn Capital	Aruze USA, Inc. Capital	Baron Asset Fund	Total
Balance at Inception (April 21, 2000)	—	$ —	$ —	$ —	$ —
Member contributions	200,000	253,054	260,000	—	513,054
Member distributions	—	(110,482)	—	—	(110,482)
Third party fee	—	—	(10,000)	—	(10,000)
Net loss accumulated during the development stage	—	(7,281)	(1,874)	—	(9,155)
Balance at December 31, 2000	200,000	135,291	248,126	—	383,417
Member contributions	7,692	—	—	20,800	20,800
Third party fee	—	—	—	(800)	(800)
Net loss accumulated during the development stage	—	(8,213)	(8,213)	(473)	(16,899)
Balance at December 31, 2001	207,692	$ 127,078	$ 239,913	$ 19,527	$ 386,518
Net loss accumulated during the development stage (unaudited)	—	(2,241)	(2,241)	(173)	(4,655)
Balance at March 31, 2002 (unaudited)	207,692	$ 124,837	$ 237,672	$ 19,354	$ 381,863

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

VALVINO LAMORE, LLC AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Three Months Ended March 31, 2002	Three Months Ended March 31, 2001	Year Ended December 31, 2001	Inception to December 31, 2000	Inception to March 31, 2002
	(Unaudited)	(Unaudited)			(Unaudited)
Cash Flows From Operating Activities					
Net loss accumulated during the development stage	$ (4,655)	$ (3,487)	$ (16,899)	$ (9,155)	$ (30,709)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by/(used in) operating activities:					
Depreciation and amortization	2,122	1,823	7,979	3,681	13,782
Amortization of loan origination fees	—	—	—	1,465	1,465
Loss on sale of fixed assets	62	49	394	—	456
Incidental operations	820	1,904	3,611	1,198	5,629
Increase (decrease) in cash from changes in:					
Restricted cash	(1,787)	—	(524)	—	(2,311)
Receivables, net	(16)	531	675	7,042	7,701
Inventories	21	85	38	690	749
Prepaid expenses and other	(13)	20	(81)	(664)	(758)
Accounts payable and accrued expenses	(94)	(744)	620	(9,064)	(8,538)
Net Cash Provided by / (Used in) Operating Activities	(3,540)	181	(4,187)	(4,807)	(12,534)
Cash Flows From Investing Activities					
Acquisition of Desert Inn Resort and Casino, net of cash acquired	—	—	—	(270,718)	(270,718)
Capital expenditures	(8,424)	(7,997)	(29,080)	(47,068)	(84,572)
Acquisition of airplane			(9,489)	—	(9,489)
Other assets	(953)	30	(1,720)	(1,299)	(3,972)
Due from related parties	(114)	2	(1,465)	(1,163)	(2,742)
Proceeds from sale of equipment	8,007	96	775	776	9,558

Net Cash Used in Investing Activities	(1,484)	(7,869)	(40,979)	(319,472)	(361,935)

(Continued)

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

Cash Flows From Financing Activities					
Equity contributions	—	—	20,800	480,713	501,513
Equity distributions	—	—	—	(110,482)	(110,482)
Third party fee	—	—	(800)	(10,000)	(10,800)
Proceeds from issuance of long-term debt				125,000	125,000
Principal payments of long-term debt	(8)	(7)	(32)	(125,018)	(125,058)
Loan origination fees	—	—	—	(1,465)	(1,465)
Proceeds from issuance of related party loan	—	—	—	100,000	100,000
Principal payments of related party loan	—	—	—	(70,000)	(70,000)
Net Cash Provided by (used in) Financing Activities	(8)	(7)	19,968	388,748	408,708
Increase/(Decrease) in Cash and Cash Equivalents	(5,032)	(7,695)	(25,198)	64,469	34,239
Cash, Beginning of Period	39,271	64,469	64,469	—	—
Cash, End of Period	$ 34,239	$ 56,774	$ 39,271	$ 64,469	$ 34,239
Supplemental cash flow disclosure:					
Interest paid, net of amounts capitalized	$ 6	$ 7	$ 28	$ 17	$ 51

Supplemental cash flow disclosures of noncash transactions:

During the period from inception (April 21, 2000) through December 31, 2000, a member converted $30 million of related party debt and $2.3 million of accrued interest into equity.

As further discussed in Note 1, during the year ended December 31, 2001, the Company acquired the Desert Inn Water Company and $6.4 million of receivables recorded as Due from related party in the balance sheet at December 31, 2000 were reclassified to Water rights.

During the year ending December 31, 2001, the Company reduced the value of land by approximately $1.4 million. This amount represented the amount of excess liabilities accrued at the date of the Desert Inn Resort & Casino purchase.

(Concluded)

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

VALVINO LAMORE, LLC AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. *Summary of Significant Accounting Policies*

a. Organization and Basis for Presentation

Valvino Lamore, LLC was formed on April 21, 2000 as a Nevada limited-liability company. At formation the Company's sole member was Stephen A. Wynn. As of December 31, 2001, subsidiaries of Valvino Lamore, LLC include Wynn Design and Development, LLC, Rambas Marketing Company, LLC, Palo, LLC, Toasty, LLC, Wynn Resorts Holdings, LLC, WorldWide Wynn, LLC, Kevyn, LLC and Desert Inn Water Company, LLC and are collectively, with Valvino Lamore, LLC, herein referred to as the "Company".

Pursuant to an Asset and Land Purchase Agreement dated as of April 28, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC and Stephen A. Wynn, the Company acquired the assets and liabilities of the Desert Inn Resort and Casino for approximately $270 million plus an adjustment for working capital, as defined. Upon receiving all necessary regulatory approvals, the purchase was completed on June 22, 2000. The acquisition has been accounted for using the purchase method of accounting. The purchase price has been allocated to the assets acquired and liabilities assumed based on estimated fair values at the date of acquisition.

On August 28, 2000, the Company permanently closed the Desert Inn Resort and Casino with the exception of the golf course and its related retail, food and beverage operations. Operations of the Company have been primarily limited to the design, development and financing of a new casino/hotel project named "Le Rêve". As of the date of this report, neither the timing nor the full scope of the "Le Rêve" project has been finalized.

Pursuant to the Amended and Restated Operating Agreement (the "Agreement") dated October 3, 2000, the Company admitted a new member, Aruze USA, Inc., in exchange for a capital contribution of $260 million. As part of this capital acquisition, the Company paid a fee of $10 million to a third party. The Company amended the Agreement on April 16, 2001 when a third member, Baron Asset Fund, was admitted in exchange for a capital contribution of $20.8 million. As part of this capital acquisition, the Company paid a fee of $800,000 to a third party.

On April 1, 2001, the Company acquired Kevyn, LLC, a previously unconsolidated affiliate, which was wholly owned by Mr. Wynn, for approximately $10 million. As Kevyn, LLC primarily consisted of an airplane, this transaction was treated as an acquisition of assets for financial reporting purposes. Management believes that the cash paid for the assets was equivalent to the fair market value of the assets at the time of acquisition.

Additionally, effective June 28, 2001, the Nevada Public Utility Commission approved the transfer of ownership of Desert Inn Water Company, also a previously unconsolidated affiliate and wholly owned company of Mr. Wynn, to the Company. As the Desert Inn Water Company primarily consisted of water rights, this transaction was treated as an acquisition of assets for financial reporting purposes. The Company exchanged the receivable from the Desert Inn Water Company in this acquisition, which was equivalent to the fair market value of the water rights of $6.4 million.

b. Development Stage Risk Factors

As a development stage company, the Company has risks that may impact its ability to become an operating enterprise or to remain in existence. The Company is currently in the process of planning, developing and obtaining additional financing for the "Le Rêve" project.

The Company is subject to many rules and regulations in both the construction and development phases and in operating gaming facilities, including, but not limited, to receiving the appropriate permits for particular construction activities and securing a Nevada state gaming license for the ownership and operation of the "Le Rêve" project. The completion of the "Le Rêve" project is dependent upon compliance with these rules and regulations.

c. Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Significant intercompany balances and transactions have been eliminated.

d. Cash and Cash Equivalents

Cash and cash equivalents are comprised of highly liquid investments with a maturity of three months or less. Cash equivalents are carried at cost, which approximates fair value.

e. Restricted Cash

Restricted cash consists of certificates of deposits to collateralize certain construction insurance claims as well as required sales tax deposits.

f. Inventories

Retail, food and beverage inventories are stated at the lower of cost or market value. Cost is determined by the first-in, first-out and specific identification methods.

g. Property and Equipment

The allocation of the purchase price of the Desert Inn Resort and Casino to these asset categories was based upon an appraisal and management's estimate of the fair value of the assets acquired. Subsequent purchases of property and equipment are stated at cost. Depreciation is provided over the estimated useful lives of the assets using the straight-line method for financial reporting purposes as follows:

Buildings and improvements	1 to 3 years
Parking garage	15 years
Airplane	7 years
Furniture, fixtures and equipment	3 to 5 years

The design and development costs for the new casino/hotel project are capitalized. Costs of building repairs and maintenance are charged to expense as incurred. The cost and accumulated depreciation of property and equipment retired or otherwise disposed of

are eliminated from the respective accounts and any resulting gain or loss is included in operating income or loss.

h. Loan Origination Fees

Loan origination fees, included in other assets, are capitalized and amortized over the life of the loan as interest expense using the effective interest rate method. Approximately $1.5 million was amortized during the period from April 21, 2000 through December 31, 2000. No amounts were amortized during the year ending December 31, 2001.

i. Capitalized Interest

Interest costs, including amortized loan origination fees, are capitalized and included in the cost of the new casino/hotel project based upon amounts expended on the project using the weighted-average cost of the Company's outstanding borrowings. Capitalization of interest will cease when the project is substantially complete. There was no capitalized interest for the three months ended March 31, 2002 and 2001 or for the year ended December 31, 2001. Capitalized interest for the periods from inception to December 31, 2000 and March 31, 2002 was $6.3 million.

j. Income Taxes

As a limited-liability company, Valvino Lamore, LLC is classified as a partnership for federal income tax purposes. Accordingly, no provision is made in the accounts of the Company for federal income taxes, as such taxes are liabilities of the Members.

k. Members' Equity

There are a total of 500,000 shares authorized, 207,692 of which are designated common shares. The designations, voting powers, preferences, limitations, restrictions and rights of the remaining 292,308 shares shall be prescribed by the board of representatives for the Company. Each of the common shares shall have identical rights in all respects except as specifically set forth in the Agreement. The holders of common shares shall have rights to an allocation of profits and losses and to any distributions based on their respective ownership percentages as defined under the Agreement.

l. Use of Estimates

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

m. Long-Lived Assets

Long-lived assets, which are not to be disposed of, including property and equipment, are periodically reviewed by management for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. As of December 31, 2001, management does not believe any assets have been impaired.

n. Water Rights

The Company, as part of the overall purchase price of the Desert Inn Resort and Casino acquired water rights with an appraised value of $6.4 million. The water rights have been recorded as an asset at this appraised value and have an indefinite useful life.

o. Interim Financial Statements

The financial statements for the three-month periods ended March 31, 2002 and 2001 are unaudited but, in the opinion of management, include all adjustments (consisting only of normal, recurring adjustments) necessary for a fair presentation of the financial results of the interim periods. The results of operations for the three-month periods ended March 31, 2002 and 2001 are not necessarily indicative of the results to be expected for the year ending December 31, 2002.

p. Recent Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement on financial Accounting Standards ("SFAS") No. 141, "Business Combinations" and SFAS No. 142, "Goodwill and Other Intangible Assets." SFAS No. 141 prohibits the pooling of interests method of accounting for business combinations initiated after June 30, 2001. SFAS No. 142, which is effective for the Company January 1, 2002, requires, among other things, the discontinuance of goodwill amortization. In addition, the standard includes provisions for the reclassification of certain existing intangibles as goodwill, reassessment of the useful lives of existing intangibles, and ongoing assessments of potential impairment of existing goodwill. As of December 31, 2001, the Company had no goodwill but did have an intangible asset consisting of a trademark with an indefinite useful life. Accordingly, the adoption of this statement on January 1, 2002 did not have a material effect on the Company's consolidated financial position or results of operations.

In June 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations" which addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. This Statement applies to legal obligations associated with the retirement for certain obligations of lessees. This Statement is effective for fiscal years beginning after June 15, 2002. The Company does not expect adoption of SFAS No. 143 will have a material impact on the Company's consolidated financial position or results of operations.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" which addresses financial accounting and reporting for the impairment or disposal of long-lived assets and supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of." The provisions of this Statement are effective for fiscal years beginning after December 15, 2001. The Company adopted SFAS No. 144 on January 1, 2002 with no material impact on the Company's consolidated financial position or results of operations.

In April 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections." Among other things, this statement rescinds SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt" which required all gains and losses from extinguishment of debt

to be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. As a result, the criteria in APB Opinion No. 30, "Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions," will now be used to classify those gains and losses. The Company does not anticipate that adoption of this statement will have an impact on its consolidated financial position or results of operations.

q. Pre-Opening Costs

Pre-opening costs are expensed as incurred.

2. *Incidental Operations*

Upon completion of the acquisition of the Desert Inn Resort and Casino on June 22, 2000, the Company announced its intention to close the property and to plan the development of a new casino/hotel project named "Le Rêve" on the existing site. In accordance with SFAS No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projects," both the casino/hotel operation and the golf course and related operations are being accounted for as separate incidental operations. Under this method, incidental operations with a net income are excluded from the Company's consolidated operating results and the net income from each is recorded as a reduction in the carrying value of land. Incidental operations with a net loss are stated separately on the consolidated statements of operations. The amount of net income from incidental operations recorded as a reduction in the carrying value of land was approximately $3,611,000 and $1,198,000 for the year ended December 31, 2001 and the period April 21, 2000 through December 31, 2000, respectively. Incidental operations resulting in a net loss are reported in the Statement of Operations.

3. *Receivables*

Components of receivables as of December 31 were as follows:

	(In thousands)	
	2001	2000
Casino	$ 610	$ 1,707
Hotel/Golf Course	166	465
Other	53	—
	829	2,172
Less: allowance for doubtful accounts	(627)	(1,295)
	$ 202	$ 877

The Company maintains an allowance for doubtful accounts, which is based on management's estimate of the amount expected to be uncollectible considering historical experience and the information management obtains regarding the credit worthiness of the customer.

4. *Property and Equipment*

Property and equipment as of December 31 consisted of the following:

	(In thousands)	
	2001	2000
Land	$ 289,521	$ 286,998
Buildings and improvements	15,879	15,623
Parking garage	1,041	1,041
Airplane	9,489	—
Furniture, fixtures and equipment	3,874	4,552
Construction in progress	27,475	8,484
	347,279	316,698
Less: accumulated depreciation	(9,815)	(3,676)
	$ 337,464	$ 313,022

Construction in progress includes interest and other costs capitalized in conjunction with the new casino/hotel project.

5. *Long-term Debt*

On June 15, 2000, the Company entered into a loan agreement with Stephen A. Wynn, for unsecured borrowings totaling $100 million with an original maturity date of June 15, 2002. The interest rate during the loan period was 7.9%, as defined in the loan agreement. Pursuant to the Amended and Restated Operating Agreement dated October 3, 2000, $70 million of this loan was repaid on October 10, 2000. The remaining $30 million principal and $2.3 million accrued interest was converted to equity as a member contribution.

On July 10, 2000, the Company entered into a loan agreement with Deutsche Bank Securities Inc., as Lead Arranger, and Bankers Trust Company, as Administrative Agent, for a loan in the amount of $125 million with an original maturity date of July 10, 2001. These borrowings were used to make an equity distribution of approximately $110.5 million to Stephen A. Wynn. The interest during the loan period was 7.9%, as defined in the loan agreement. The loan was collateralized by certain real and personal property of the Company and by a guaranty from Stephen A. Wynn. Pursuant to the Amended and Restated Operating Agreement dated October 3, 2000, this loan was repaid on October 10, 2000.

The balance of long-term debt at December 31, 2001 totals approximately $291,000 net of the current portion of approximately $35,000. This represents a note payable related to the acquisition of a parcel of land in 1994. Both the land and related note payable were acquired as part of the acquisition of the Desert Inn Resort and Casino. The note carries an interest rate of 8% and provides for payments of principal and interest totaling $5,000 per month until February 2009.

6. *Employee Savings Plan*

The Company established a retirement savings plan under Section 401(k) of the Internal Revenue Code covering its non-union employees on July 27, 2000. The plan allows employees to defer, within prescribed limits, up to 18% of their income on a pre-tax basis through

contributions to this plan. The Company matches the contributions, within prescribed limits, with an amount equal to 100% of the participant's initial 2% tax deferred contribution and 50% of the tax deferred contribution between 2% and 4% of the participant's compensation. The Company recorded charges for matching contributions of approximately $127,000 for the year ended December 31, 2001 and $67,000 for the period from inception through December 31, 2000.

Union employees are covered by various multi-employer pension plans. The Company recorded expenses of approximately $425,000 and $376,000 under such plans for the year ended December 31, 2001 and the period from inception through December 31, 2000, respectively. Information from the plans' sponsors is not available to permit the Company to determine its share of unfunded vested benefits, if any.

7. *Related Parties*

At December 31 amounts due from related parties were as follows:

	(In thousands)	
	2001	2000
Desert Inn Water Company, LLC	$ —	$ 6,488
Las Vegas CharterJet, LLC	2,376	1,027
Kevyn, LLC	—	48
Other Related Parties	332	80
	$ 2,708	$ 7,643

Amounts due from other related parties consist of amounts paid on behalf of related parties.

As further discussed in Note 1, both Desert Inn Water Company, LLC and Kevyn, LLC were acquired by the Company during 2001.

Las Vegas CharterJet, LLC is an unconsolidated affiliate that is wholly owned by Mr. Wynn at December 31, 2001. The Company disburses funds for payroll, property taxes, insurance and all other operating expenses on behalf of Las Vegas CharterJet, LLC. The Company also leases an airplane to Las Vegas CharterJet, LLC on a per flight hour basis. Las Vegas CharterJet, LLC in turn charges the Company for the business use of its airplane. For the year ended December 31, 2001, the Company recognized lease revenues of approximately $838,000. For the year ended December 31, 2001 and the period from inception to December 31, 2000, the Company and paid Las Vegas CharterJet, LLC approximately of $919,000 and $452,000 for the use of the aircraft.

8. *Commitments and Contingencies*

a. Leases

No significant third party operating leases exist as of December 31, 2001 or 2000. As discussed in Note 7, the Company leases an airplane to Las Vegas CharterJet, LLC on a per flight hour basis. The lease term runs through July 2005 or other such date as the parties may mutually agree.

b. Long-term Executive Compensation

The Company intends to adopt incentive stock plans for non-employee directors and certain of its key executives.

c. Litigation

In the normal course of business, the Company is subject to disputes with third parties, which have led to litigation. Management believes that the final disposition of such matters will not have a material adverse effect on the Company's financial position or results of operations.

d. Entertainment Services

The Company has entered into a long-term agreement with a creative production company for the creation, development and executive production of new theatrical entertainment attractions for the new casino/hotel project. At December 31, 2001 and 2000, other assets include $1.6 million and $1.1 million, respectively, of amounts paid in conjunction with this agreement. An additional $2 million, payable in two equal installments, will be payable upon the approval of the show concepts.

e. Construction Contracts

The Company has entered into certain contracts related to the construction of "Le Rêve". Currently, the Company is committed to approximately $6.2 million under these contracts as of December 31, 2001.

f. Self-Insurance

The Company is self-insured for medical and worker's compensation claims. The Individual Stop Loss Attachment Point for each claim is $40,000 for medical and $250,000 for worker's compensation claims with a maximum payout of $960,000 and $1,000,000, respectively.

9. *Earnings Per Share*

Earnings per share are calculated in accordance with SFAS No. 128, "Earnings Per Share". SFAS No. 128 provides for the reporting of "basic", or undiluted earnings per share ("EPS"), and "diluted" EPS. Basic EPS is computed by dividing net income by the weighted average number of shares outstanding during the period. Diluted EPS reflects the addition of potentially dilutive securities. At December 31, 2001 and 2000 and March 31, 2002, the Company has no potentially dilutive securities and has recorded net losses and accordingly, basic EPS is equal to diluted EPS.

10. *Subsequent Events*

a. Capital Contributions and Investment in Wynn Resorts (Macau), S.A.

In April 2002, Mr. Wynn contributed approximately $32 million in cash plus his interest in Wynn Resorts (Macau), S.A., which holds a provisional concession to negotiate with the government of Macau an agreement to construct and operate casinos in Macau.

In addition, in April 2002, Aruze USA, Inc. contributed an additional $120 million in cash and Baron Asset Fund contributed an additional approximately $20.3 million in cash.

Immediately following those additional capital contributions, Mr. Wynn and Aruze USA, Inc. each owned 47.5% of the membership interests in the Company, and Baron Asset Fund owned 5% of the membership interests in the Company.

b. Sale of Airplane

On March 26, 2002, the Company sold the aircraft (See Note 7) for approximately $8 million resulting in a loss of approximately $69,000.

c. Other Acquisitions

In May 2002, the Company purchased the assets and assumed the liabilities of World Travel and Las Vegas Jet, entities previously wholly owned by Mr. Wynn, for approximately $38 million. At that time, World Travel had indebtedness of approximately $28.5 million. In addition, Valvino had a receivable from Las Vegas Jet, previously doing business as Las Vegas CharterJet LLC, of approximately $2.4 million, which was forgiven.

11. *Condensed Consolidating Financial Information of Guarantors and Issuers*

Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., wholly owned subsidiaries of the Company, intend to jointly issue $350 million of second mortgage notes. The Company and certain of its subsidiaries anticipate providing guarantees in connection with the issuance of such notes. The following combining financial statements present information related to the issuers, guarantors and non-guarantors as of March 31, 2002 and 2001 and December 31, 2001 and 2000 and for the three months ended March 31, 2002 and 2001, the year ended December 31, 2001 and the period from inception to December 31, 2000.

Wynn Las Vegas, LLC was formed in April 2001 and Wynn Las Vegas Capital Corp. was formed in June 2002. Accordingly, there is no financial information for Wynn Las Vegas Capital Corp. for the periods presented and no financial information for Wynn Las Vegas, LLC for the three months ended March 31, 2001 or the period from inception to December 31, 2000. Guarantors of the notes anticipated to be issued are the Company and its wholly owned subsidiaries, Wynn Design and Development, LLC, Wynn Resorts LLC, Palo, LLC, Desert Inn Water Company, LLC, World Travel, LLC and Las Vegas Jet, LLC. As indicated in Note 10, World Travel, LLC and Las Vegas Jet, LLC were acquired in May 2002. Accordingly, the All Other Guarantor financial information excludes these entities for all periods presented.

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING BALANCE SHEETS

As of March 31, 2002

(In thousands)

(Unaudited)

Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total

Assets:						
Current Assets						
Cash and Cash Equivalents	$ 34,720	$ —	$ (481)	$ —	$ —	$ 34,239
Restricted Cash	23	2,288	—	—	—	2,311
Receivables	206	—	12	—	—	218
Due from Related Parties, Current	662	—	—	—	—	662
Inventories	202	—	61	—	—	263
Prepaid Expenses and Other	255	9	643	—	—	907
Total Current Assets	36,068	2,297	235	—	—	38,600
Property and Equipment, Net	269,619	2	62,478	2,777	—	334,876
Water Rights	—	—	6,400	—	—	6,400
Due from Related Parties, Net of Current	87,327	(5,052)	(76,257)	(3,857)	—	2,161
Trademark	—	—	1,000	—	—	1,000
Other Assets	157	1,840	1,015	—	(18)	2,994
Total Assets	$ 393,171	$ (913)	$ (5,129)	$ (1,080)	$ (18)	$ 386,031
Liabilities and Members' Equity:						
Current Liabilities						
Accounts Payable	$ 211	$ 32	$ 1,407	$ 6	$ —	$ 1,656
Accrued Expenses	1,455	43	648	48	—	2,194
Current Portion of Long-Term Debt	36	—	—	—	—	36
Total Current Liabilities	1,702	75	2,055	54	—	3,886
Long-Term Debt	282	—	—	—	—	282
Members' Equity						
Contributed Capital	412,572	—	18	—	(18)	412,572
Deficit Accumulated from Inception During the Development Stage	(21,385)	(988)	(7,202)	(1,134)	—	(30,709)
	391,187	(988)	(7,184)	(1,134)	(18)	381,863
Total Liabilities and Members' Equity	$ 393,171	$ (913)	$ (5,129)	$ (1,080)	$ (18)	$ 386,031

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING BALANCE SHEETS

As of December 31, 2001

(In thousands)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Assets:						
Current Assets						
Cash and Cash Equivalents	$ 39,590	$ (49)	$ (270)	$ —	$ —	$ 39,271
Restricted Cash	24	500		—	—	524
Receivables	162	—	40	—	—	202
Due from Related Parties, Current	332	—	—	—	—	332
Inventories	223	—	61	—	—	284
Prepaid Expenses and Other	228	—	666	—	—	894
Total Current Assets	40,559	451	497	—	—	41,507
Property and Equipment, Net	272,071	2	54,184	11,207	—	337,464
Water Rights	—	—	6,400	—	—	6,400
Due from Related Parties, Net of Current	82,733	(2,302)	(66,270)	(11,785)	—	2,376
Trademark	—	—	1,000	—	—	1,000

Other Assets	157	1,252	650	—	(18)	2,041
Total Assets	$ 395,520	$ (597)	$ (3,539)	$ (578)	$ (18)	$ 390,788
Liabilities and Members' Equity:						
Current Liabilities						
Accounts Payable	$ 256	$ 57	$ 1,754	$ 4	$ —	$ 2,071
Accrued Expenses	1,382	28	431	32	—	1,873
Current Portion of Long-Term Debt	35	—	—	—	—	35
Total Current Liabilities	1,673	85	2,185	36	—	3,979
Long-Term Debt	291	—	—	—	—	291
Members' Equity						
Contributed Capital	412,572	—	18	—	(18)	412,572
Deficit Accumulated from Inception During the Development Stage	(19,016)	(682)	(5,742)	(614)	—	(26,054)
	393,556	(682)	(5,724)	(614)	(18)	386,518
Total Liabilities and Members' Equity	$ 395,520	$ (597)	$ (3,539)	$ (578)	$ (18)	$ 390,788

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING BALANCE SHEETS

AS OF DECEMBER 31, 2000

(In Thousands)

	Valvino Lamore, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Assets:					
Current Assets					
Cash and Cash Equivalents	$ 64,474	$ (25)	$ 20	$ —	$ 64,469
Receivables	867	10	—	—	877
Due from Related Parties, Current	80	—	—	—	80
Inventories	322	—	—	—	322
Prepaid Expenses and Other	813	—	—	—	813
Total Current Assets	66,556	(15)	20	—	66,561
Property and Equipment, Net	282,731	27,516	2,775	—	313,022
Due from Related Parties, Net of Current	38,320	(27,912)	(2,845)	—	7,563
Other Assets	1,321	—	—	—	1,321
Total Assets	$ 388,928	$ (411)	$ (50)	$ —	$ 388,467
Liabilities and Members' Equity:					
Current Liabilities					
Accounts Payable	$ 503	$ 67	$ 5	$ —	$ 575
Accrued Expenses	4,057	58	2	—	4,117
Current Portion of Long-Term Debt	32	—	—	—	32
Total Current Liabilities	4,592	125	7	—	4,724
Long-Term Debt	326	—	—	—	326
Members' Equity					
Contributed Capital	392,572	—	—	—	392,572

Deficit Accumulated from Inception During the Development Stage	(8,562)	(536)	(57)	—	(9,155)
	384,010	(536)	(57)	—	383,417
Total Liabilities and Members' Equity	$ 388,928	$ (411)	$ (50)	$ —	$ 388,467

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF OPERATIONS

THREE MONTHS ENDED MARCH 31, 2002

(In Thousands)

(Unaudited)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Revenues						
Airplane Lease	$ —	$ —	$ —	$ 69	$ —	$ 69
Art Gallery	—	—	65	—	—	65
Retail	—	—	48	—	—	48
Water	—	—	17	—	(15)	2
Total Revenue	—		130	69	(15)	184
Expenses						
Pre-Opening Costs	794	305	1,397	23	15	2,534
Depreciation and Amortization	1,631	1	45	445	—	2,122
Loss / (Gain) on Sale of Fixed Assets	(7)	—	—	69	—	62
Selling, General & Administrative	—	—	116	52	(30)	138
Cost of Water	—	—	2	—	—	2
Cost of Retail Sales	—	—	30	—	—	30
Loss / (Gain) from Incidental Operations	107	—	—	—	—	107
Total Expenses	2,525	306	1,590	589	(15)	4,995
Operating Loss	(2,525)	(306)	(1,460)	(520)	—	(4,811)
Other Income / (Expense)						
Interest Expense, Net of Amounts Capitalized	(6)	—	—	—	—	(6)
Interest Income	162	—	—	—	—	162
Other Income, Net	156	—	—	—	—	156
Net Loss Accumulated During the Development Stage	$ (2,369)	$ (306)	$ (1,460)	$ (520)	$ —	$ (4,655)

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF OPERATIONS

Three Months Ended March 31, 2001

(In Thousands)

(Unaudited)

	Valvino Lamore, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Revenues	$ —	$ —	$ —	$ —	$ —
Expenses					
Pre-Opening Costs	2,079	(8)	21	—	2,092
Depreciation and Amortization	1,805	18	—	—	1,823
Loss / (Gain) on Sale of Fixed Assets	49	—	—	—	49
Selling, General & Administrative	—	—	77	—	77
Facility Closure	328	—	—	—	328
Total Expenses	4,261	10	98	—	4,369
Operating Loss	(4,261)	(10)	(98)	—	(4,369)
Other Income / (Expense)					
Interest Expense, Net of Amounts Capitalized	(7)	—	—	—	(7)
Interest Income	889	—	—	—	889
Other Income, Net	882	—	—	—	882
Net Loss Accumulated During the Development Stage	$ (3,379)	$ (10)	$ (98)	$ —	$ (3,487)

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF OPERATIONS

Year Ended December 31, 2001

(In Thousands)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Revenues						
Airplane Lease	$ —	$ —	$ —	$ 838	$ —	$ 838
Art Gallery	—	—	35	—	—	35
Retail	—	—	27	—	—	27
Water	—	—	77	—	(59)	18
Total Revenue	—	—	139	838	(59)	918
Expenses						
Pre-Opening Costs	5,241	682	5,025	71	(39)	10,980
Depreciation and Amortization	6,780	—	119	1,080	—	7,979
Loss / (Gain) on Sale of Fixed Assets	394	—	—	—	—	394
Selling, General & Administrative	—	—	152	244	(20)	376
Facility Closure	373	—	—	—	—	373
Cost of Water	—	—	40	—	—	40
Cost of Retail Sales	—	—	9	—	—	9
Total Expenses	12,788	682	5,345	1,395	(59)	20,151
Operating Loss	(12,788)	(682)	(5,206)	(557)	—	(19,233)
Other Income / (Expense)						
Interest Expense, Net of	(28)	—	—	—	—	(28)

Amounts Capitalized						
Interest Income	2,362	—	—	—	—	2,362
Other Income, Net	2,334	—	—	—	—	2,334
Net Loss Accumulated During the Development Stage	$ (10,454)	$ (682)	$ (5,206)	$ (557)	$ —	$ (16,899)

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF OPERATIONS

From Inception to December 31, 2000

(In thousands)

	Valvino Lamore, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Revenues	$ —	$ —	$ —	$ —	$ —
Expenses					
Pre-Opening Costs	3,970	494	58	—	4,522
Depreciation and Amortization	3,640	41	—	—	3,681
Facility Closure	1,206	—	—	—	1,206
Cost of Retail Sales	—	—	—	—	—
Loss / (Gain) from Incidental Operations	1,163	—	—	—	1,163
Total Expenses	9,979	535	58	—	10,572
Operating Loss	(9,979)	(535)	(58)	—	(10,572)
Other Income / (Expense)					
Interest Expense, Net of Amounts Capitalized	(17)	—	—	—	(17)
Interest Income	1,434	—	—	—	1,434
Other Income, Net	1,417	—	—	—	1,417
Net Loss Accumulated During the Development Stage	$ (8,562)	$ (535)	$ (58)	$ —	$ (9,155)

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF OPERATIONS

From Inception to March 31, 2002

(In thousands)

(Unaudited)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Revenues						
Airplane Lease	$ —	$ —	$ —	$ 907	$ —	$ 907
Art Gallery	—	—	100	—	—	100
Retail	—	—	75	—	—	75
Water	—	—	94	—	(74)	20
Total Revenue	—	—	269	907	(74)	1,102

Expenses						
Pre-Opening Costs	10,005	987	6,916	152	(24)	18,036
Depreciation and Amortization	12,051	1	205	1,525	—	13,782
Loss / (Gain) on Sale of Fixed Assets	387	—	—	69	—	456
Selling, General & Administrative	—	—	268	296	(50)	514
Facility Closure	1,579	—	—	—	—	1,579
Cost of Water	—	—	42	—	—	42
Cost of Retail Sales	—	—	39	—	—	39
Loss / (Gain) from Incidental Operations	1,270	—	—	—	—	1,270
Total Expenses	25,292	988	7,470	2,042	(74)	35,718
Operating Loss	(25,292)	(988)	(7,201)	(1,135)	—	(34,616)
Other Income / (Expense)						
Interest Expense, Net of Amounts Capitalized	(51)	—	—	—	—	(51)
Interest Income	3,958	—	—	—	—	3,958
Other Income, Net	3,907	—	—	—	—	3,907
Net Loss Accumulated During the Development Stage	$ (21,385)	$ (988)	$ (7,201)	$ (1,135)	$ —	$ (30,709)

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF CASH FLOWS

Three Months Ended March 31, 2002

(In thousands)

(Unaudited)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Cash Flows From Operating Activities						
Net Loss Accumulated During the Development Stage	$ (2,369)	$ (306)	$ (1,460)	$ (520)	$ —	$ (4,655)
Adjustments to Reconcile Net Loss Accumulated During the Development Stage to Net Cash Provided by/(Used in) Operating Activities:						
Depreciation and Amortization	1,631	1	45	445	—	2,122
Amortization of Loan Origination Fees	—	—	—	—	—	—
Gain/(Loss) on Sale of Fixed Assets	(7)	—	—	69	—	62
Incidental Operations	820	—	—	—	—	820
Increase (Decrease) in Cash from Changes in:						
Restricted Cash	1	(1,788)	—	—	—	(1,787)
Receivables, Net	(44)	—	28	—	—	(16)
Inventories	21	—	—	—	—	21
Prepaid Expenses and Other	(27)	(9)	23	—	—	(13)
Accounts Payable and Accrued Expenses	28	(10)	(130)	18	—	(94)
Net Cash Provided by / (Used in) Operating Activities	54	(2,112)	(1,494)	12	—	(3,540)
Cash Flows From Investing Activities						
Capital Expenditures	—	—	(8,340)	(84)	—	(8,424)
Other Assets	—	(588)	(365)	—	—	(953)
Due from Related Parties	(4,923)	2,749	9,988	(7,928)	—	(114)
Proceeds from Sale of Equipment	7	—	—	8,000	—	8,007
Net Cash Provided by / (Used in) Investing Activities	(4,916)	2,161	1,283	(12)	—	(1,484)
Cash Flows From Financing Activities						
Principal Payments of Long-Term Debt	(8)	—	—	—	—	(8)
Net Cash Used in Financing Activities	(8)	—	—	—	—	(8)

Increase/(Decrease) in Cash and Cash Equivalents	(4,870)	49	(211)	—	—	(5,032)
Cash, Beginning of Period	39,590	(49)	(270)	—	—	39,271
Cash, End of Period	$ 34,720	$ —	$ (481)	$ —	$ —	$ 34,239
Supplemental Cash Flow Disclosure:						
Interest Paid, Net of Amounts Capitalized	$ 6	$ —	$ —	$ —	$ —	$ 6

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF CASH FLOWS

Three Months Ended March 31, 2001

(In thousands)

(Unaudited)

	Valvino Lamore, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Cash Flows From Operating Activities					
Net Loss Accumulated During the Development Stage	$ (3,379)	$ (10)	$ (98)	$ —	$ (3,487)
Adjustments to Reconcile Net Loss Accumulated During the Development Stage to Net Cash Provided by / (Used in) Operating Activities:					
Depreciation and Amortization	1,805	18	—	—	1,823
Loss on Sale of Fixed Assets	49	—	—	—	49
Incidental Operations	1,904	—	—	—	1,904
Increase (Decrease) in Cash from Changes in:					
Receivables, Net	521	10	—	—	531
Inventories	85	—	—	—	85
Prepaid Expenses and Other	20	—	—	—	20
Accounts Payable and Accrued Expenses	(1,041)	286	11	—	(744)
Net Cash Provided by / (Used in) Operating Activities	(36)	304	(87)	—	181
Cash Flows From Investing Activities					
Capital Expenditures	(5,775)	(2,219)	(3)		(7,997)
Other Assets	30	—	—	—	30
Due from Related Parties	(1,820)	1,753	69	—	2
Proceeds from Sale of Equipment	96	—	—	—	96
Net Cash Provided by / (Used in) Investing Activities	(7,469)	(466)	66	—	(7,869)
Cash Flows From Financing Activities					
Principal Payments of Long-Term Debt	(7)	—	—	—	(7)
Net Cash Used in Financing Activities	(7)	—	—	—	(7)
Decrease in Cash and Cash Equivalents	(7,512)	(162)	(21)	—	(7,695)
Cash, Beginning of Period	64,474	(25)	20	—	64,469
Cash, End of Period	$ 56,962	$ (187)	$ (1)	$ —	$ 56,774
Supplemental Cash Flow Disclosure:					
Interest Paid, Net of Amounts Capitalized	$ 7	$ —	$ —	$ —	$ 7

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF CASH FLOWS

Year Ended December 31, 2001

(In thousands)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Cash Flows From Operating Activities						
Net Loss Accumulated During the	$ (10,454)	$ (682)	$ (5,206)	$ (557)	$ —	$ (16,899)

Development Stage						
Adjustments to Reconcile Net Loss Accumulated During the Development Stage to Net Cash Provided by / (Used in) Operating Activities:						
Depreciation and Amortization	6,780	—	119	1,080	—	7,979
Loss on Sale of Fixed Assets	394	—	—	—	—	394
Incidental Operations	3,611	—	—	—	—	3,611
Increase (Decrease) in Cash from Changes in:						
Restricted Cash	(24)	(500)	—	—	—	(524)
Receivables, Net	705	—	(30)	—	—	675
Inventories	99	—	(61)	—	—	38
Prepaid Expenses and Other	585	—	(666)	—	—	(81)
Accounts Payable and Accrued Expenses	(1,554)	85	2,060	29	—	620
Net Cash Provided by / (Used in) Operating Activities	142	(1,097)	(3,784)	552	—	(4,187)
Cash Flows From Investing Activities						
Capital Expenditures	(9,667)	(3)	(19,387)	(23)	—	(29,080)
Acquisition of Airplane	—	—	—	(9,489)	—	(9,489)
Other Assets	1,164	(1,252)	(1,650)	—	18	(1,720)
Due from Related Parties	(37,266)	2,303	24,576	8,940	(18)	(1,465)
Proceeds from Sale of Equipment	775	—	—	—	—	775
Net Cash Provided by / (Used in) Investing Activities	(44,994)	1,048	3,539	(572)	—	(40,979)
Cash Flows From Financing Activities						
Equity Contributions	20,800	—	—	—	—	20,800
Third Party Fee	(800)	—	—	—	—	(800)
Principal Payments of Long-Term Debt	(32)	—	—	—	—	(32)
Net Cash Provided by Financing Activities	19,968	—	—	—	—	19,968
Decrease in Cash and Cash Equivalents	(24,884)	(49)	(245)	(20)	—	(25,198)
Cash, Beginning of Period	64,474	—	(25)	20	—	64,469
Cash, End of Period	$ 39,590	$ (49)	$ (270)	$ —	$ —	$ 39,271
Supplemental Cash Flow Disclosure:						
Interest Paid, Net of Amounts Capitalized	$ 28	$ —	$ —	$ —	$ —	$ 28

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF CASH FLOWS

Inception to December 31, 2000

(In thousands)

	Valvino Lamore, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Cash Flows From Operating Activities					
Net Loss Accumulated During the Development Stage	$ (8,562)	$ (535)	$ (58)	$ —	$ (9,155)
Adjustments to Reconcile Net Loss Accumulated During the Development Stage to Net Cash Provided by / (Used in) Operating Activities:					
Depreciation and Amortization	3,640	41	—	—	3,681
Amortization of Loan Origination Fees	1,465	—	—	—	1,465
Incidental Operations	1,198	—	—	—	1,198
Increase (Decrease) in Cash from Changes in:					
Receivables, Net	7,052	(10)	—	—	7,042

Inventories	690	—	—	—	690
Prepaid Expenses and Other	(664)	—	—	—	(664)
Accounts Payable and Accrued Expenses	(9,196)	125	7	—	(9,064)
Net Cash Provided by / (Used in) Operating Activities	(4,377)	(379)	(51)	—	(4,807)
Cash Flows From Investing Activities					
Acquisition of Desert Inn Resort and Casino, Net of Cash Acquired	(270,718)	—	—	—	(270,718)
Capital Expenditures	(45,792)	(1,276)	—		(47,068)
Other Assets	(1,299)	—	—	—	(1,299)
Due from Related Parties	(2,864)	1,630	71	—	(1,163)
Proceeds from Sale of Equipment	776	—	—	—	776
Net Cash Provided by / (Used in) Investing Activities	(319,897)	354	71	—	(319,472)
Cash Flows From Financing Activities					
Equity Contributions	480,713	—	—	—	480,713
Equity Distributions	(110,482)				(110,482)
Third Party Fee	(10,000)	—	—	—	(10,000)
Proceeds from Issuance of Long-Term Debt	125,000				125,000
Principal Payments of Long-Term Debt	(125,018)	—	—	—	(125,018)
Loan Origination Fees	(1,465)	—	—	—	(1,465)
Proceeds from Issuance of Related Party Loan	100,000				100,000
Principal Payments of Related Party Loan	(70,000)				(70,000)
Net Cash Provided by Financing Activities	388,748	—	—	—	388,748
Increase/(Decrease) in Cash and Cash Equivalents	64,474	(25)	20	—	64,469
Cash, Beginning of Period	—	—	—	—	—
Cash, End of Period	$ 64,474	$ (25)	$ 20	$ —	$ 64,469
Supplemental Cash Flow Disclosure:					
Interest Paid, Net of Amounts Capitalized	$ 17	$ —	$ —	$ —	$ 17

VALVINO LAMORE, LLC AND SUBSIDIARIES

CONSOLIDATING STATEMENTS OF CASH FLOWS

From Inception to March 31, 2002

(In Thousands)

(Unaudited)

	Valvino Lamore, LLC	Wynn Las Vegas, LLC	All Other Guarantors	All Other Subsidiaries	Eliminating Entries	Total
Cash Flows From Operating Activities						
Net Loss Accumulated During the Development Stage	$ (21,385)	$ (988)	$ (7,201)	$ (1,135)	$ —	$ (30,709)
Adjustments to Reconcile Net Loss Accumulated During the Development Stage to Net Cash Provided by/(Used in) Operating Activities:						
Depreciation and Amortization	12,051	1	205	1,525	—	13,782
Amortization of Loan Origination Fees	1,465	—	—	—	—	1,465
Loss on Sale of Fixed Assets	387	—	—	69	—	456
Incidental Operations	5,629	—	—	—	—	5,629
Increase (Decrease) in Cash from Changes in:						
Restricted Cash	(23)	(2,288)		—	—	(2,311)
Receivables, Net	7,713	—	(12)	—	—	7,701
Inventories	810	—	(61)	—	—	749
Prepaid Expenses and Other	(106)	(9)	(643)	—	—	(758)
Accounts Payable and Accrued Expenses	(10,722)	75	2,055	54	—	(8,538)

Net Cash Provided by / (Used in) Operating Activities	(4,181)	(3,209)	(5,657)	513	—	(12,534)
Cash Flows From Investing Activities						
Acquisition of Desert Inn Resort and Casino, Net of Cash Acquired	(270,718)	—	—	—	—	(270,718)
Capital Expenditures	(55,459)	(3)	(29,003)	(107)	—	(84,572)
Acquisition of Airplane	—	—	—	(9,489)	—	(9,489)
Other Assets	(135)	(1,840)	(2,015)	—	18	(3,972)
Due from Related Parties	(45,053)	5,052	36,194	1,083	(18)	(2,742)
Proceeds from Sale of Equipment	1,558	—	—	8,000	—	9,558
Net Cash Provided by/(Used in) Investing Activities	(369,807)	3,209	5,176	(513)	—	(361,935)
Cash Flows From Financing Activities						
Equity Contributions	501,513	—	—	—	—	501,513
Equity Distributions	(110,482)	—	—	—	—	(110,482)
Third Party Fee	(10,800)	—	—	—	—	(10,800)
Proceeds from Issuance of Long-Term Debt	125,000	—	—	—	—	125,000
Principal Payments of Long-Term Debt	(125,058)	—	—	—	—	(125,058)
Loan Origination Fees	(1,465)	—	—	—	—	(1,465)
Proceeds from Issuance of Related Party Loan	100,000	—	—	—	—	100,000
Principal Payments of Related Party Loan	(70,000)	—	—	—	—	(70,000)
Net Cash Provided by Financing Activities	408,708	—	—	—	—	408,708
Increase/(Decrease) in Cash and Cash Equivalents	34,720	—	(481)		—	34,239
Cash, Beginning of Period	—	—	—	—	—	—
Cash, End of Period	$ 34,720	—	$ (481)	$ —	$ —	$ 34,239
Supplemental Cash Flow Disclosure:						
Interest Paid, Net of Amounts Capitalized	$ 51	$ —	$ —	$ —	$ —	$ 51

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.

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Until , 2002 (25 days after the date of this prospectus), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

Wynn Resorts, Limited

Shares

Common Stock

Joint Book-Running Managers

Deutsche Bank Securities
Bear, Stearns & Co. Inc.
Banc of America Securities LLC

Dresdner Kleinwort Wasserstein

Prospectus

, 2002

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by the Registrant in connection with the sale and distribution of the common stock being registered. All amounts shown are estimates except for the Securities and Exchange Commission registration fee, the National Securities Dealers, Inc. filing fee and The Nasdaq National Market quotation fee.

	Amount
Registration fee—Securities and Exchange Commission	$ 37,559
Filing fee—National Association of Securities Dealers, Inc.	30,500
Quotation fee—The Nasdaq National Market	100,000
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue sky fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous	*
Total	$ *

* To be filed by amendment.

Item 14. Indemnification of Directors and Officers

The Nevada Revised Statutes provide that a corporation may indemnify its officers and directors against expenses actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action (other than an action brought by or on behalf of the corporation as discussed below) by reason of his or her official position with the corporation provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the law or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation and, with respect to any criminal actions, had no reasonable cause to believe his or her conduct was unlawful. A corporation may indemnify its officers and directors against expenses, including amounts paid in settlement, actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action by or on behalf of the corporation by reason of his or her official position with the corporation provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the laws or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation. The Nevada Revised Statutes further provides that a corporation generally may not indemnify an officer or director if it is determined by a court that such officer or director is liable to the corporation or responsible for any amounts paid to the corporation as a settlement, unless a court also determines that the officer or director is entitled to indemnification in light of all of the relevant facts and circumstances. The Nevada Revised Statutes require a corporation to indemnify an officer or director to the extent he or she is successful on the merits or otherwise successfully defends the action.

Wynn Resorts' bylaws, will provide that it will indemnify its directors and officers to the maximum extent permitted by Nevada law, including in circumstances in which indemnification is otherwise discretionary under Nevada law. In addition, Wynn Resorts intends to enter into separate indemnification agreements, attached as Exhibit hereto, with its directors and officers which would require Wynn Resorts, among other things, to indemnify them against certain liabilities which may arise by reason of their status or service other than liabilities arising from willful misconduct of a culpable nature. Wynn Resorts also intends to maintain director and officer liability insurance, if available on reasonable terms. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of Wynn Resorts' officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, which we refer to as the Securities Act. We have been advised that, in the opinion of the Securities and Exchange

Commission, indemnification of directors or officers for liabilities arising under the Securities Act of 1933, as amended, is against public policy and, therefore, such indemnification provisions may be unenforceable.

The Underwriting Agreement, attached as Exhibit 1.1 hereto, provides for indemnification by the Underwriters of Wynn Resorts and its officers and directors for certain liabilities, including matters arising under the Securities Act.

Item 15. Recent Sales of Unregistered Securities

The following is a summary of the transactions by the Registrant during the past three years involving sales of the Registrant's securities that were not registered under the Securities Act:

(a) In April 2000, Stephen A. Wynn formed Valvino Lamore, LLC, known as Valvino, as its single member. Between April and September 2000, Mr. Wynn made equity contributions in an aggregate amount of $220.7 million. Until immediately prior to the consummation of this offering, our assets and operations were held and conducted by Valvino and its subsidiaries.

(b) In October 2000, Aruze USA, a Nevada corporation, contributed $260 million in cash to Valvino Lamore in exchange for 50% of the outstanding membership interests of Valvino and was admitted as a member to Valvino.

(c) In April 2001, Baron Asset Fund, a Massachusetts business trust, contributed $20.8 million in cash to Valvino in exchange for 3.70% of the outstanding membership interests of Valvino and was admitted as a member to Valvino.

(d) In April 2002, (1) Baron Asset Fund contributed an additional approximately $20.3 million in cash to Valvino, (2) Aruze USA contributed an additional $120 million in cash to Valvino, (3) Mr. Wynn contributed an additional approximately $32 million in cash to Valvino and (4) Mr. Wynn contributed his interest in Wynn Resorts (Macau), S.A., which was valued at approximately $56 million by the parties in the negotiation of Mr. Wynn's contribution of his interest, to Valvino. Immediately following these capital contributions, each of Mr. Wynn and Aruze USA owned 47.5%, and Baron Asset Fund owned 5%, of the outstanding membership interests of Valvino.

(e) In June 2002, the Kenneth R. Wynn Family Trust entered into an agreement to contribute $1.2 million in cash to Valvino in exchange for 0.146% of the outstanding membership interests in Valvino. The Kenneth R. Wynn Family Trust's obligation to make this capital contribution is subject only to conditions outside of his control. We expect that

this contribution will be made before the sale and distribution of the common stock being registered.

(f) In exchange for the contribution of all of their respective membership interests in Valvino, immediately prior to this offering becoming effective, the Registrant plans to issue shares of its common stock to each of Mr. Wynn, Aruze USA, Baron Asset Fund and the Kenneth R. Wynn Family Trust.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and the Registrant believes that each transaction was exempt from the registration requirements of the Securities Act by virtue of Section 4(2) thereof and, or Regulation D promulgated thereunder or Rule 701 pursuant to compensatory benefit plans and contracts relating to compensation as provided under Rule 701.

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

Exhibit No.	Description
*1.1	Form of Underwriting Agreement.
3.1	Articles of Incorporation of the Registrant.
*3.2	Amended and Restated Articles of Registrant (to be adopted prior to the completion of this offering).
3.3	Bylaws of the Registrant.
*3.4	Amended and Restated Bylaws of the Registrant (to be adopted prior to the completion of this offering).
*4.1	Specimen certificate for shares of Common Stock, $0.01 par value per share, of the Registrant.
*5.1	Opinion of Schreck Brignone Godfrey
10.1	Asset and Land Purchase Agreement, dated as of April 28, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC and Stephen A. Wynn.
10.2	First Amendment to Asset and Land Purchase Agreement, dated as of May 26, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC and Stephen A. Wynn.
10.3	Second Amendment to Asset and Land Purchase Agreement, dated as of June 16, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.

10.4 Third Amendment to Asset and Land Purchase Agreement, dated as of June 22, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.

10.5 Fourth Amendment to Asset and Land Purchase Agreement, dated as of October 27, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton SGC Sub Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.

10.6 Fifth Amendment to Asset and Land Purchase Agreement, dated as of November 3, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton SGC Sub Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.

*10.7 Agreement, dated January 25, 2001, by and between Wynn Resorts Holdings, LLC and Calitri Services and Licensing Limited Liability Company.

10.8 Lease Agreement, dated November 1, 2001, by and between Valvino Lamore, LLC and Wynn Resorts Holdings, LLC.

10.9 Art Rental and Licensing Agreement, dated November 1, 2001, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.

10.10 Stockholders Agreement, dated as of April 11, 2002, by and among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.

10.11 Agreement for Guaranteed Maximum Price Construction Services between Wynn Las Vegas, LLC and Marnell Corrao Associates, Inc. for Le Rêve.

10.12 Continuing Guaranty, dated June 4, 2002, by Austi, Inc. in favor of Wynn Las Vegas, LLC.

10.13 Design/Build Agreement, dated June 6, 2002, by and between Wynn Las Vegas, LLC and Bomel Construction Company, Inc.

*10.14 2002 Stock Incentive Plan

*10.15 Form of Director and Officer Indemnification Agreement

*10.16 Employment Agreement, dated April 1, 2002, by and between Wynn Resorts Holdings, LLC and Ronald J. Kramer.

*10.17 Contribution Agreement, dated as of June 11, 2002 by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fund, the Kenneth R. Wynn Family Trust dated February 1985 and Wynn Resorts, Limited.

*10.18 Amended and Restated Business Loan Agreement, dated as of May 30, 2002, between Bank of America, N.A. and World Travel, LLC.

*10.19 Continuing Guaranty, dated May 30, 2002, by Valvino Lamore, LLC in favor of Bank of America, N.A.

*10.20 Agreement, dated as of June 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited.

*10.21 Purchase Agreement, dated May 30, 2002, between Stephen A. Wynn and Valvino Lamore, LLC.

*21.1 Subsidiaries of the Registrant.

*23.1 Consent of Schreck Brignone Godfrey (included in Exhibit 5.1).

23.2 Consent of Deloitte & Touche LLP.

23.3 Consents of Persons Named to Become Directors.

24.1 Power of Attorney (included on the signature page of this Registration Statement).

* To be filed by amendment.

(b) Financial Statement Schedules:

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings

The undersigned Registrant hereby undertakes to provide to the Underwriters at the closing specified in the Underwriting Agreement certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions referenced in Item 14 of this Registration Statement or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. If a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by a director, officer or controlling person in connection with the securities being registered hereunder, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act, and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of Prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of Prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of Prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 14th day of June, 2002.

WYNN RESORTS, LIMITED

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Chairman of the Board of Directors & Chief Executive Officer (Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Stephen A. Wynn and John Strzemp and each of them acting individually, as true and lawful attorneys-in-fact and agents each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities to sign any and all amendments to this Registration Statement (including post-effective amendments, or any abbreviated registration statement and any amendments thereto filed pursuant to Rule 462(b) and otherwise), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission granting unto said attorneys-in-fact and agents the full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, as to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
/s/ STEPHEN A. WYNN Stephen A. Wynn	Chairman of the Board of Directors and Chief Executive Officer	June 14, 2002
/s/ JOHN STRZEMP John Strzemp	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	June 14, 2002

INDEPENDENT AUDITORS' REPORT

To the Members of Valvino Lamore, LLC and Subsidiaries:

We have audited the consolidated financial statements of Valvino Lamore and subsidiaries (a development stage company) (the "Company") as of December 31, 2001 and 2000, and the related consolidated statements of operations, members' equity, and cash flows for the year ended December 31, 2001 and for the period from inception (April 21, 2000) to December 31, 2000, and have issued our report thereon dated June 6, 2002; such consolidated financial statements and report are included in the Registration Statement of Wynn Resorts, Inc. on Form S-1. Our audits also included the financial statement schedule of the Company, listed in Item 16. This financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based on our audits. In our opinion, such financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

DELOITTE & TOUCHE LLP

Las Vegas, Nevada
June 6, 2002

Valvino Lamore, LLC and Subsidiaries
(A Development Stage Company)

Schedule II

Valuation and Qualifying Accounts

(In Thousands)

Description	Balance at Beginning of Period	Balance at End of Period
Allowance for Doubtful Accounts Receivable		
Year ended December 31, 2001	$ 1,295	$ 627
Period ended December 31, 2000	$ 0	$ 1,295

EXHIBIT INDEX

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23.3	Consents of Persons Named to Become Directors.
24.1	Power of Attorney (included on the signature page of this Registration Statement).

* To be filed by amendment.

QuickLinks

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Exhibit 3.1

ARTICLES OF INCORPORATION

OF

WYNN RESORTS, LIMITED

The undersigned, for the purpose of forming a corporation pursuant to and by virtue of Chapter 78 of the Nevada Revised Statutes, hereby adopts and executes the following Articles of Incorporation.

ARTICLE I
NAME

The name of the corporation shall be "Wynn Resorts, Limited"

ARTICLE II
REGISTERED OFFICE

The name of the initial resident agent and the street address of the initial registered office in the State of Nevada where process may be served upon the corporation is Marc H. Rubinstein, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109. The corporation may, from time to time, in the manner provided by law, change the resident agent and the registered office within the State of Nevada. The corporation may also maintain an office or offices for the conduct of its business, either within or without the State of Nevada.

ARTICLE III
CAPITAL STOCK

Section 1. *Authorized Shares.* The aggregate number of shares which the corporation shall have authority to issue shall consist of two thousand (2,000) shares of common stock, par value $0.01.

Section 2. *Assessment of Stock.* The capital stock of the corporation, after the amount of the subscription price has been fully paid in, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed. No stockholder of the corporation is individually liable for the debts or liabilities of the corporation.

ARTICLE IV
DIRECTORS AND OFFICERS

Section 1. *Number of Directors.* The members of the governing board of the corporation are styled as directors. The board of directors of the corporation shall be elected in such manner as shall be provided in the bylaws of the corporation. The initial board of directors shall consist of at least one (1) and not more than ten (10) individuals. The number of directors may be changed from time to time within this range in such manner as shall be provided in the bylaws of the corporation.

Section 2. *Initial Directors.* The name and post office box or street address of the director constituting the initial board of directors is:

Name	Address
Stephen A. Wynn	3145 Las Vegas Boulevard South Las Vegas, Nevada 89109

Section 3. *Payment of Expenses.* In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the corporation in its bylaws or by agreement, the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding, involving alleged acts or omissions of such officer or director in his or her capacity as an officer or director of the corporation, must be paid, by the corporation or through insurance purchased

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and maintained by the corporation or through other financial arrangements made by the corporation, as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the corporation.

Section 4. *Limitation on Liability.* The liability of directors and officers of the corporation shall be eliminated or limited to the fullest extent permitted by the Nevada Revised Statutes. If the Nevada Revised Statutes are amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the corporation shall be eliminated or limited to the fullest extent permitted by the Nevada Revised Statutes, as so amended from time to time.

ARTICLE V
REPEAL AND CONFLICTS

Any repeal or modification of Section 3 or 4 of Article IV above approved by the stockholders of the corporation shall be prospective only, and shall not adversely affect any limitation on the liability of a director or officer of the corporation existing as of the time of such repeal or modification. In the event of any conflict between Section 3 or 4 of Article IV and any other Article of the corporation's Articles of Incorporation, the terms and provisions of Sections 3 and/or 4 of Article IV shall control.

ARTICLE VI
COMBINATIONS WITH INTERESTED STOCKHOLDERS

At such time, if any, as the Corporation becomes a "resident domestic corporation", as that term is defined in NRS 78.427, the Corporation shall not be subject to, or governed by, any of the provisions in NRS 78.411 to 78.444, inclusive, as may be amended from time to time, or any successor statute.

ARTICLE VII
INCORPORATOR

The name and post office box or street address of the incorporator signing these Articles of Incorporation is:

Name	Address
Ellen Schulhofer, Esq.	300 S. Fourth Street, Ste. 1200 Las Vegas, Nevada 89101

IN WITNESS WHEREOF, I have executed these Articles of Incorporation this 3rd day of June, 2002.

/s/ Ellen Schulhofer

Ellen Schulhofer, Esq.

CERTIFICATE OF ACCEPTANCE OF APPOINTMENT
BY RESIDENT AGENT
IN THE MATTER OF WYNN RESORTS, LIMITED

1. The undersigned, Marc H. Rubinstein, hereby certifies that on the 3rd day of June, 2002, he accepted the appointment as resident agent of the above-referenced corporation.

2. The registered office of the corporation in the State of Nevada is located at 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of June, 2002.

RESIDENT AGENT,

By: /s/ Marc. H. Rubinstein

Marc H. Rubinstein, Esq.

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Exhibit 3.3

BYLAWS

OF

Wynn Resorts, Limited,
a Nevada corporation

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BYLAWS
OF
Wynn Resorts, Limited,
a Nevada corporation

ARTICLE I
STOCKHOLDERS

1.01 *Annual Meeting.* An annual meeting of the stockholders of the corporation shall be held at 2:00 p.m., local time, on the third Thursday of May, in each year, commencing after the first anniversary of incorporation, but if such date is a Saturday, Sunday or legal holiday, then on the next succeeding business day, for the purpose of electing directors of the corporation to serve during the ensuing year and for the transaction of such other business as may properly come before the meeting. If the election of the directors is not held on the day designated herein for any annual meeting of the stockholders, or at any adjournment thereof, the president shall cause the election to be held at a special meeting of the stockholders as soon thereafter as is convenient.

1.02 *Special Meetings.*

(a) Special meetings of the stockholders may be called by the chairman of the board, if any, or the president and shall be called by the chairman, if any, the president or the Board of Directors at the written request of the holders of not less than a majority of the voting power of any class of the corporation's stock entitled to vote.

(b) No business shall be acted upon at a special meeting except as set forth in the notice calling the meeting, unless one of the conditions for the holding of a meeting without notice set forth in Section 1.05 shall be satisfied, in which case any business may be transacted and the meeting shall be valid for all purposes.

1.03 *Place of Meetings.* Any meeting of the stockholders of the corporation may be held at its registered office in the State of Nevada or at such other place in or out of the State of Nevada and the United States as the Board of Directors may designate. A waiver of notice signed by stockholders entitled to vote may designate any place for the holding of such meeting.

1.04 *Notice of Meetings; Waiver of Notice.*

(a) The president, a vice president, the secretary, an assistant secretary or any other individual designated by the Board of Directors shall sign and deliver, or cause to be delivered, written notice to the stockholders of any stockholders' meeting at least ten (10) days, but not more than sixty (60) days, before the date of such meeting. The notice shall state the place, date and time of the meeting and the purpose or purposes for which the meeting is called.

(b) In the case of an annual meeting, any proper business may be presented for action, except that action on any of the following items shall be taken only if the general nature of the proposal is stated in the notice:

(i) Action with respect to any contract or transaction between the corporation and one or more of its directors or officers or between the corporation and any corporation, firm or association in which one or more of the corporation's directors or officers is a director or officer or is financially interested;

(ii) Adoption of amendments to the Articles of Incorporation; or

(iii) Action with respect to a merger, share exchange, reorganization, partial or complete liquidation, or dissolution of the corporation.

(c) A copy of the notice shall be personally delivered or mailed postage prepaid to each stockholder of record entitled to vote at the meeting at the address appearing on the records of the corporation, and the notice shall be deemed delivered the date the same is deposited in the United States mail for transmission to such stockholder. If the address of any stockholder does not

appear upon the records of the corporation, it will be sufficient to address any notice to such stockholder at the registered office of the corporation.

(d) The written certificate of the individual signing a notice of meeting, setting forth the substance of the notice or having a copy thereof attached, the date the notice was mailed or personally delivered to the stockholders and the addresses to which the notice was mailed, shall be prima facie evidence of the manner and fact of giving such notice.

(e) Any stockholder may waive notice of any meeting by a signed writing, either before or after the meeting. Such waiver of notice shall be deemed the equivalent of the giving of such notice. Attendance of a person at a meeting shall also constitute waiver of notice of such meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not properly included in the notice itself if such objection is expressly made at the time such matters are presented at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting needs to be specified in any written waiver or notice or consent except as may be provided otherwise by these Bylaws.

1.05 *Meeting Without Notice.*

(a) Whenever all persons entitled to vote at any meeting consent, either by: (i) a writing on the records of the meeting or filed with the secretary, (ii) presence at such meeting and oral consent entered on the minutes, or (iii) taking part in the deliberations at such meeting without objection, such meeting shall be as valid as if a meeting regularly called and noticed.

(b) At such meeting any business may be transacted which is not excepted from the written consent or to the consideration of which no objection for want of notice is made at the time.

(c) If any meeting be irregular for want of notice or of such consent, provided a quorum was present at such meeting, the proceedings of the meeting may be ratified and approved and rendered likewise valid and the irregularity or defect therein waived by a writing signed by all parties having the right to vote at such meeting.

(d) Such consent or approval may be by proxy or power of attorney, but all such proxies and powers of attorney must be in writing.

1.06 *Determination of Stockholders of Record.*

(a) For the purpose of determining the stockholders entitled to notice of and to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

(b) If no record date is fixed, the record date for determining stockholders: (i) entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) entitled to express consent to corporate action in writing without a meeting shall be the day on which the first written consent is expressed; and (iii) for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders shall apply to any

adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

1.07 *Quorum; Adjourned Meetings.*

(a) Unless the Articles of Incorporation provide for a different proportion, stockholders holding at least a majority of the voting power of the corporation's capital stock, represented in person or by proxy, are necessary to constitute a quorum for the transaction of business at any meeting. If, on any issue, voting by classes is required by the laws of the State of Nevada, the Articles of Incorporation or these Bylaws, at least a majority of the voting power within each such class is necessary to constitute a quorum of each such class.

(b) If a quorum is not represented, a majority of the voting power so represented may adjourn the meeting from time to time until a quorum shall be represented. At any such adjourned meeting at which a quorum shall be represented, any business may be transacted which might have been transacted as originally called. When a stockholders' meeting is adjourned to another time or place hereunder, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. The stockholders present at a duly convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum of the voting power.

1.08 *Voting; Manner of Acting.*

(a) Unless otherwise provided in the Articles of Incorporation, or in the resolution providing for the issuance of the preferred stock adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of the Articles of Incorporation, each stockholder of record, or such stockholder's duly authorized proxy or attorney-in-fact, shall be entitled to one (1) vote for each share of voting stock standing registered in such stockholder's name on the record date.

(b) Except as otherwise provided herein, all votes with respect to shares standing in the name of an individual on the record date (including pledged shares) shall be cast only by that individual or such individual's duly authorized proxy, attorney-in-fact, or voting trustee(s) pursuant to a voting trust. With respect to shares held by a representative of the estate of a deceased stockholder, guardian, conservator, custodian or trustee, votes may be cast by such holder upon proof of such representative capacity, even though the shares do not stand in the name of such holder. In the case of shares under the control of a receiver, the receiver may cast votes carried by such shares even though the shares do not stand in the name of the receiver; provided, that the order of a court of competent jurisdiction which appoints the receiver contains the authority to cast votes carried by such shares. If shares stand in the name of a

minor, votes may be cast only by the duly appointed guardian of the estate of such minor if such guardian has provided the corporation with written proof of such appointment.

(c) With respect to shares standing in the name of another corporation, partnership, limited liability company or other legal entity on the record date, votes may be cast: (i) in the case of a corporation, by such individual as the bylaws of such other corporation prescribe, by such individual as may be appointed by resolution of the board of directors of such other corporation or by such individual (including the officer making the authorization) authorized in writing to do so by the chairman of the board, if any, president or any vice president of such corporation and (ii) in the case of a partnership, limited liability company or other legal entity, by an individual representing such stockholder upon presentation to the corporation of satisfactory evidence of his or her authority to do so.

(d) Notwithstanding anything to the contrary herein contained, the Corporation shall not vote, directly or indirectly, shares of its own stock owned by it; and such shares shall not be

counted in determining the total number of outstanding shares. If shares in the Corporation are held by the Corporation in a fiduciary capacity, no votes shall be cast with respect thereto on any matter except to the extent that the beneficial owner thereof possesses and exercises a right to vote and gives the Corporation binding instructions on how to vote.

(e) Any holder of shares entitled to vote on any matter may cast a portion of the votes in favor of such matter and refrain from casting the remaining votes or cast the same against the proposal, except in the case of elections of directors. If such holder entitled to vote votes any of its shares affirmatively and fails to specify the number of affirmative votes, it will be conclusively presumed that the holder is casting affirmative votes with respect to all shares held.

(f) With respect to shares standing in the name of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, voting trustees, persons entitled to vote under a stockholder voting agreement or otherwise and shares held by two or more persons (including proxy holders) having the same fiduciary relationship in respect to the same shares, votes may be cast in the following manner:

(i) If only one person votes, the vote of such person binds all.

(ii) If more than one person casts votes, the act of the majority so voting binds all.

(iii) If more than one person casts votes, but the vote is evenly split on a particular matter, the votes shall be deemed cast proportionately, as split.

(g) If a quorum is present, unless the Articles of Incorporation provide for a different proportion, action by the stockholders entitled to vote on a matter other than the election of directors, is approved by and is the act of the stockholders, if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action, unless voting by classes is required for any action of the stockholders by the laws of the State of Nevada, the Articles of Incorporation or these Bylaws, in which case the number of votes cast in favor of the action by the voting power of each such class must exceed the number of votes cast in opposition to the action by the voting power of each such class.

(h) If a quorum is present, unless elected by written consent pursuant to these Bylaws and Section 78.320 of the Nevada Revised Statutes, directors shall be elected by a plurality of the votes cast.

1.09 *Proxies.* At any meeting of stockholders, any holder of shares entitled to vote may designate, in a manner permitted by the laws of the State of Nevada, another person or persons to act as a proxy or proxies. Every proxy shall continue in full force and effect until its expiration or revocation in a manner permitted by the laws of the State of Nevada.

1.10 *Telephonic Meetings.* Stockholders may participate in a meeting of the stockholders by means of a telephone conference or similar method of communication by which all individuals participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 1.10 constitutes presence in person at the meeting.

1.11 *Action Without Meeting.* Any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if a written consent thereto is signed by the holders of the voting power of the corporation that would be required at a meeting to constitute the act of the stockholders. Whenever action is taken by written consent, a meeting of stockholders need not be called or notice given. The written consent may be signed in counterparts, including, without limitation, facsimile counterparts, and shall be filed with the minutes of the proceedings of the stockholders.

1.12 *Organization; Order of Business.* Meetings of stockholders shall be presided over by the chairman of the board, or in the absence of the chairman by the president, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by the Board of Directors by a chairman chosen at the meeting by the stockholders entitled to cast a majority of the votes which all stockholders present in person or by proxy are entitled to cast. The secretary, or in the absence of the secretary an assistant secretary, shall act as secretary of the meeting, but in the absence of the secretary and any assistant secretary the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitation on the time allotted to questions or comments on the affairs of the corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

ARTICLE II
DIRECTORS

2.01 *Number, Tenure, and Qualifications.* Unless a larger number is required by the laws of the State of Nevada or the Articles of Incorporation or until changed in the manner provided herein, the Board of Directors of the corporation shall consist of at least one (1) individual and not more than ten (10) individuals. Except as provided in Section 2.06 below, the directors shall be elected at the annual meeting of the stockholders of the corporation and shall hold office until their successors are elected and qualify or until their earlier resignation or removal. A director need not be a stockholder of the corporation.

2.02 *Change In Number.* Subject to any limitations in the laws of the State of Nevada, the Articles of Incorporation or these Bylaws, the number of directors within the fixed minimum and maximum set forth in Section 2.01 may be changed from time to time by resolution adopted by the Board of Directors or the stockholders without amendment to these Bylaws or the Articles of Incorporation.

2.03 *Reduction In Number.* No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his or her term of office.

2.04 *Resignation.* Any director may resign effective upon giving written notice to the chairman of the board, if any, the president or the secretary, or in the absence of all of them, any other officer, unless the notice specifies a later time for effectiveness of such resignation. A majority of the remaining directors, though less than a quorum, may appoint a successor to take office when the resignation becomes effective, each director so appointed to hold office during the remainder of the term of office of the resigning director.

2.05 *Removal.*

(a) The Board of Directors of the corporation, by majority vote, may declare vacant the office of a director who has been declared incompetent by an order of a court of competent jurisdiction or convicted of a felony.

(b) Any director may be removed from office by the vote or written consent of stockholders representing not less than two-thirds of the voting power of the issued and outstanding stock entitled to vote.

2.06 *Vacancies.*

(a) All vacancies, including those caused by an increase in the number of directors, may be filled by a majority of the remaining directors, though less than a quorum, or by the stockholders entitled to vote at any annual meeting or special meeting held in accordance with Article I, unless it is otherwise provided in the Articles of Incorporation unless, in the case of removal of a director, the stockholders by a majority of voting power shall have appointed a successor to the removed director. Subject to the provisions of Subsection (b) below, (i) in the case of the replacement of a director, the appointed director shall hold office during the remainder of the term of office of the replaced director, and (ii) in the case of an increase in the number of directors, the appointed director shall hold office until the next meeting of stockholders at which directors are elected.

(b) If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the stockholders shall constitute less than a majority of the directors then in office, any holder or holders of an aggregate of five percent (5%) or more of the total voting power entitled to vote may call a special meeting of the stockholders to elect the entire Board of Directors. The term of office of any director shall terminate upon such election of a successor.

2.07 *Annual and Regular Meetings.* Immediately following the adjournment of, and at the same place as, the annual or any special meeting of the stockholders at which directors are elected other than pursuant to Section 2.06 of this Article, the Board of Directors, including directors newly elected, shall hold its annual meeting without call or notice, other than this provision, to elect officers and to transact such further business as may be necessary or appropriate. The Board of Directors may provide by resolution the place, date, and hour for holding regular meetings between annual meetings.

2.08 *Special Meetings.* Special meetings of the Board of Directors may be called by the chairman of the board, or if there be no chairman of the board, by the president or secretary, and shall be called by the chairman of the board, if any, the president or the secretary upon the request of any three (3) directors. If the chairman of the board or, if there be no chairman, both the president and secretary, refuse or neglect to call such special meeting, a special meeting may be called by notice signed by any two (2) directors.

2.09 *Place of Meetings.* Any regular or special meeting of the directors of the corporation may be held at such place as the Board of Directors, or in the absence of such designation, as the notice calling such meeting, may designate. A waiver of notice signed by the directors may designate any place for the holding of such meeting.

2.10 *Notice of Meetings.* Except as otherwise provided in Section 2.07, there shall be delivered to all directors, at least twenty-four (24) hours before the time of such meeting, a copy of a written notice of any meeting (i) by delivery of such notice personally; (ii) by mailing such notice postage prepaid; (iii) by facsimile; (iv) by electronic mail; (v) by overnight courier; or (vi) by telegram. Such notice shall be addressed in the manner provided for notice to stockholders in Section 1.04(c). If mailed inside the United States, the notice shall be deemed delivered two (2) business days following the date the same is deposited in the United States mail, postage prepaid. If mailed outside the United States, the notice shall be deemed delivered four (4) business days following the date the same is deposited in the United States mail, postage prepaid. If sent via facsimile, the notice shall be deemed delivered upon sender's receipt of confirmation of the successful transmission. If the address of any director does not appear upon the records of the Corporation it will be sufficient to address any notice to such director at the registered office of the Corporation. Any director may waive notice of any meeting, and the attendance of a director at a meeting and oral consent entered on the minutes of such meeting shall constitute waiver of notice of the meeting unless such director objects, prior to the transaction of any business, that the meeting was not lawfully called, noticed or convened. Attendance for the express purpose of

objecting to the transaction of business thereat because the meeting was not properly called or convened shall not constitute presence or a waiver of notice for purposes hereof.

2.11 *Quorum; Adjourned Meetings.*

(a) A majority of the directors in office, at a meeting duly assembled, is necessary to constitute a quorum for the transaction of business.

(b) At any meeting of the Board of Directors where a quorum is not present, a majority of those present may adjourn, from time to time, until a quorum is present, and no notice of such adjournment shall be required. At any adjourned meeting where a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

2.12 *Manner of Acting.* The affirmative vote of a majority of the directors present at a meeting at which a quorum is present is the act of the Board of Directors.

2.13 *Telephonic Meetings.* Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or such committee by means of a telephone conference or similar method of communication by which all persons participating in such meeting can hear each other. Participation in a meeting pursuant to this Section 2.13 constitutes presence in person at the meeting.

2.14 *Action Without Meeting.* Any action required or permitted to be taken at a meeting of the Board of Directors or of a committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by all of the members of the Board of Directors or the committee. The written consent may be signed in counterparts, including, without limitation, facsimile counterparts, and shall be filed with the minutes of the proceedings of the Board of Directors or committee.

2.15 *Powers and Duties.*

(a) Except as otherwise restricted in the laws of the State of Nevada or the Articles of Incorporation, the Board of Directors has full control over the business and affairs of the corporation. The Board of Directors may delegate any of its authority to manage, control or conduct the business of the corporation to any standing or special committee or to any officer or agent and to appoint any persons to be agents of the corporation with such powers, including the power to subdelegate, and upon such terms as may be deemed fit.

(b) The Board of Directors may present to the stockholders at annual meetings of the stockholders, and, when called for by a majority vote of the stockholders at an annual meeting or a special meeting of the stockholders, shall so present, a full and clear report of the condition of the corporation.

(c) The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his discretion, may (i) require that any votes cast at such meeting shall be cast by written ballot, and/or (ii) submit any contract or act for approval or ratification at any annual meeting of the stockholders or any special meeting properly called and noticed for the purpose of considering any such contract or act, provided a quorum is present.

(d) The Board of Directors may, by resolution passed by a majority of the board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors

to act at the meeting in the place of any such absent or disqualified member. Subject to applicable law and to the extent provided in the resolution of the Board of Directors, any such committee shall have and may exercise all the powers of the Board of Directors in the management of the business and affairs of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

2.16 *Compensation.* The directors and members of committees shall be allowed and paid all necessary expenses incurred in attending any meetings of the Board of Directors or committee and may be paid a fixed fee for attendance at any meeting of the Board of Directors or committee. Subject to any limitations contained in the laws of the State of Nevada, the Articles of Incorporation or any contract or agreement to which the corporation is a party, directors may receive compensation for their services as directors as determined by the Board of Directors, but only during such times as the corporation may legally declare and pay distributions on its stock, unless the payment of such compensation is first approved by the stockholders entitled to vote for the election of directors.

2.17 *Organization; Order of Business.* Meetings of the Board of Directors shall be presided over by the chairman of the board, or in the absence of the chairman of the board by the president, or in his or her absence by a chairman chosen at the meeting. The secretary, or in the absence of the secretary an assistant secretary, shall act as secretary of the meeting, but in the absence of the secretary and any assistant secretary the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting.

ARTICLE III
OFFICERS

3.01 *Election.* The Board of Directors, at its annual meeting, shall appoint a president, a secretary and a treasurer to hold office for a term of one (1) year or until their successors are duly appointed and qualified. The Board of Directors may, from time to time, by resolution, appoint any other officers or assistant officers of the corporation, including, without limitation, a chairman of the board, a chief executive officer, a chief financial officer, a chief operating officer, a controller, one or more vice presidents, one or more assistant secretaries, and one or more assistant treasurers, and may prescribe their duties and fix their

compensation. Any individual may hold two or more offices. The Board of Directors may also, from time to time, by resolution, appoint agents of the corporation, prescribe their duties and fix their compensation.

3.02 *Removal; Resignation.* Any officer or agent elected or appointed by the Board of Directors may be removed by it with or without cause. Any officer may resign at any time upon written notice to the corporation. Any such removal or resignation shall be subject to the rights, if any, of the respective parties under any contract between the corporation and such officer or agent.

3.03 *Vacancies.* Any vacancy in any office because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term of such office.

3.04 *President; Chief Executive Officer.* The president shall have active executive management of the operations of the corporation, subject to the supervision and control of the Board of Directors. The president shall direct the corporate affairs of the corporation, with full power and authority on behalf of the corporation to execute proxies and to execute powers of attorney appointing other entities the agent of the corporation. If a chief executive officer of the corporation has not been appointed, the president may be deemed the chief executive officer of the corporation.

3.05 *Vice Presidents.* The Board of Directors may elect one or more vice presidents who shall be vested with all the powers and perform all the duties of the president whenever the president is absent, disabled or otherwise unable to act and such other duties as shall be provided in these Bylaws or prescribed by the Board of Directors or the president.

3.06 *Secretary.* The secretary shall perform all duties incident to the office of secretary, including attending meetings of the stockholders and Board of Directors and keeping, or causing to be kept, the minutes of proceedings thereof in books provided for that purpose. The secretary shall attend to the giving and service of all notices of the corporation, shall have the custody or designate control of the corporate seal, shall affix the corporate seal to all certificates of stock duly issued by the corporation, shall have charge or designate control of stock certificate books, transfer books and stock ledgers and such other books and papers as the Board of Directors or appropriate committee may direct, and shall perform such other duties as these Bylaws may provide or the Board of Directors may prescribe.

3.07 *Assistant Secretaries.* The Board of Directors may appoint one or more assistant secretaries who shall have such powers and perform such duties as may be provided in these Bylaws or prescribed by the Board of Directors or the secretary.

3.08 *Treasurer.* The treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the corporation and accounts of all monies received and paid on account of the corporation, and shall perform all acts incident to the position of treasurer, subject to the control of the Board of Directors. Whenever required by the Board of Directors, the treasurer shall render a statement of any or all accounts. The treasurer shall have custody of all the funds and securities of the corporation. When necessary or proper, the treasurer shall endorse on behalf of the corporation for collection checks, notes, and other obligations, and shall deposit all monies to the credit of the corporation in such bank or banks or other depository as the Board of Directors may designate, and shall sign all receipts and vouchers for payments made by the corporation. The treasurer shall have care and custody of the stocks, bonds, certificates, vouchers, evidence of debts, securities, and such other property belonging to the corporation. The treasurer shall, if required by the Board of Directors, give bond to the corporation in such sum and with such security as shall be approved by the Board of Directors for the faithful performance of all the duties of treasurer and for restoration to the corporation, in the event of the treasurer's death, resignation, retirement or removal from office, of all books, records, papers, vouchers, money and other property in the treasurer's custody or control and belonging to the corporation. The expense of such bond shall be borne by the corporation. If a chief financial officer of the corporation has not been appointed, the treasurer may be deemed the chief financial officer of the corporation.

3.09 *Assistant Treasurers.* The Board of Directors may appoint one or more assistant treasurers who shall have such powers and perform such duties as may be prescribed by the Board of Directors or the treasurer. The Board of Directors may require an assistant treasurer to give a bond to the corporation in such sum and with such security as it may approve, for the faithful performance of the duties of assistant treasurer, and for restoration to the corporation, in the event of the assistant treasurer's death, resignation, retirement or removal from office, of all books, records, papers, vouchers, money and other property in the assistant treasurer's custody or control and belonging to the corporation. The expense of such bond shall be borne by the corporation.

3.10 *Chairman of the Board.* The chairman of the board may be chosen by and from the members of the Board of Directors and shall preside at the meetings of the Board of Directors and stockholders and perform such other duties as the Board of Directors may prescribe. If no chairman of the board is appointed or if the chairman is absent from a Board meeting, then the Board of Directors may appoint a chairman from the members of the Board for the sole purpose of presiding at any such meeting. If no chairman of the board is appointed or if the chairman is absent from any stockholder meeting, then the president shall preside at such stockholder meeting. If the president is absent from

any stockholder meeting, then the stockholders may appoint a substitute chairman solely for the purpose of presiding over such stockholder meeting.

3.11 *Execution of Negotiable Instruments, Deeds and Contracts.* Unless otherwise required by law or otherwise authorized or directed by these Bylaws or by the Board of Directors, any officer of the corporation may sign all checks, drafts, notes, bonds, bills of exchange, and orders for the payment of money of the corporation; all deeds, mortgages and other written contracts, documents, instruments and agreements to which the corporation shall be a party; and all assignments or endorsements of stock certificates, registered bonds or other securities owned by the corporation. The Board of Directors may designate one or more officers, agents of the corporation or other persons who may, in the name of the corporation, and in lieu of or in addition to the officers, sign such instruments, and may authorize the use of the facsimile signatures of any such persons. Any officer of the corporation shall be authorized to execute all resolutions and orders of the Board of Directors, and to attend, act and vote, or designate another officer or an agent of the corporation to attend, act and vote, at any meetings of the owners of any entity in which the corporation may own an interest or to take action by written consent in lieu thereof. Such officer, at any such meetings or by such written action, shall possess and may exercise on behalf of the corporation any and all rights and powers incident to the ownership of such interest.

ARTICLE IV
CAPITAL STOCK

4.01 *Issuance.* Shares of the corporation's authorized stock shall, subject to any provisions or limitations of the laws of the State of Nevada, the Articles of Incorporation or any contracts or agreements to which the corporation may be a party, be issued in such manner, at such times, upon such conditions and for such consideration as shall be prescribed by the Board of Directors.

4.02 *Certificates.* Ownership in the corporation shall be evidenced by certificates for shares of stock in such form as shall be prescribed by the Board of Directors, may be under the seal of the corporation and shall be manually signed by the president or a vice president and/or the secretary or an assistant secretary, and/or by any other officers or agents designated by the Board of Directors for this purpose; provided, however, whenever any certificate is countersigned or otherwise authenticated by a transfer agent or transfer clerk, and by a registrar, then a facsimile of the signatures of said officers or agents of the corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. If the corporation uses facsimile signatures of its officers and agents on its stock certificates, it shall not act as registrar of its own stock, but its transfer agent and registrar may be identical if the institution acting in those dual capacities countersigns any stock certificates in both capacities. Each certificate shall contain the name of the record holder, the number, designation, if any, class or series of shares represented, a statement, summary of or reference to any applicable rights, preferences, privileges or restrictions thereon, and a statement, if applicable, that the shares are assessable. All certificates shall be consecutively numbered. If provided by the stockholder, the name, address and federal tax identification number of the stockholder, the number of shares, and the date of issue shall be entered in the stock transfer records of the corporation.

4.03 *Surrendered; Lost or Destroyed Certificates.* All certificates surrendered to the corporation, except those representing shares of treasury stock, shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been canceled, except that in case of a lost, stolen, destroyed or mutilated certificate, a new one may be issued therefor. However, any stockholder applying for the issuance of a stock certificate in lieu of one alleged to have been lost, stolen, destroyed or mutilated shall, prior to the issuance of a replacement, provide the corporation with his, her or its affidavit of the facts surrounding the loss, theft, destruction or mutilation and, if required by the Board of Directors, an indemnity bond in an amount not less than twice the current

market value of the stock, and upon such terms as the treasurer or the Board of Directors shall require which shall indemnify the corporation against any loss, damage, cost or inconvenience arising as a consequence of the issuance of a replacement certificate.

4.04 *Replacement Certificate.* When the Articles of Incorporation are amended in any way affecting the statements contained in the certificates for outstanding shares of capital stock of the corporation or it becomes desirable for any reason, in the discretion of the Board of Directors, including, without limitation, the merger of the corporation with another corporation or the reorganization of the corporation, to cancel any outstanding certificate for shares and issue a new certificate therefor conforming to the rights of the holder, the Board of Directors may order any holders of outstanding certificates for shares to surrender and exchange the same for new certificates within a reasonable time to be fixed by the Board of Directors. The order may provide that a holder of any certificate(s) ordered to be surrendered shall not be entitled to vote, receive distributions or exercise any other rights of stockholders of record until the holder has complied with the order, but the order operates to suspend such rights only after notice and until compliance.

4.05 *Transfer of Shares.* No transfer of stock shall be valid as against the corporation except on surrender and cancellation of the certificates therefor accompanied by an assignment or transfer by the registered owner made either in person or under assignment. Whenever any transfer shall be expressly made for collateral security and not absolutely, the collateral nature of the transfer shall be reflected in the entry of transfer in the records of the corporation.

4.06 *Transfer Agent; Registrars.* The Board of Directors may appoint one or more transfer agents, transfer clerk and registrars of transfer and may require all certificates for shares of stock to bear the signature of such transfer agent, transfer clerk and/or registrar of transfer.

4.07 *Stock Transfer Records.* The stock transfer records shall be closed for a period of at least ten (10) days prior to all meetings of the stockholders and shall be closed for the payment of distributions as provided in Article V hereof and during such periods as, from time to time, may be fixed by the Board of Directors, and, during such periods, no stock shall be transferable for purposes of Article V and no voting rights shall be deemed transferred during such periods. Subject to the foregoing limitations, nothing contained herein shall cause transfers during such periods to be void or voidable.

4.08 *Miscellaneous.* The Board of Directors shall have the power and authority to make such rules and regulations not inconsistent herewith as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the corporation's stock.

ARTICLE V
DISTRIBUTIONS

5.01 *Distributions.* Distributions may be declared, subject to the provisions of the laws of the State of Nevada and the Articles of Incorporation, by the Board of Directors and may be paid in cash, property, shares of corporate stock, or any other medium. The Board of Directors may fix in advance a record date, as provided in Section 1.06, prior to the distribution for the purpose of determining stockholders entitled to receive any distribution. The Board of Directors may close the stock transfer books for such purpose for a period of not more than ten (10) days prior to the date of such distribution.

ARTICLE VI
RECORDS; REPORTS; SEAL; AND FINANCIAL MATTERS

6.01 *Records.* All original records of the corporation shall be kept by or under the direction of the secretary or at such places as may be prescribed by the Board of Directors.

6.02 *Directors' and Officers' Right of Inspection.* Every director and officer shall have the absolute right at any reasonable time for a purpose reasonably related to the exercise of such individual's duties to inspect and copy all of the corporation's books, records, and documents of every kind and to inspect the physical properties of the corporation and/or its subsidiary corporations. Such inspection may be made in person or by agent or attorney.

6.03 *Corporate Seal.* The Board of Directors may, by resolution, authorize a seal, and the seal may be used by causing it, or a facsimile, to be impressed or affixed or reproduced or otherwise. Except when otherwise specifically provided herein, any officer of the corporation shall have the authority to affix the seal to any document requiring it.

6.04 *Fiscal Year-End.* The fiscal year-end of the corporation shall be such date as may be fixed from time to time by resolution of the Board of Directors.

6.05 *Reserves.* The Board of Directors may create, by resolution, such reserves as the directors may, from time to time, in their discretion, deem proper to provide for contingencies, or to equalize distributions or to repair or maintain any property of the corporation, or for such other purpose as the Board of Directors may deem beneficial to the corporation, and the directors may modify or abolish any such reserves in the manner in which they were created.

ARTICLE VII
INDEMNIFICATION

7.01 *Indemnification and Insurance.*

(a) *Indemnification of Directors and Officers.*

(i) For purposes of this Article, (A) "Indemnitee" shall mean each director or officer who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding (as hereinafter defined), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving in any capacity at the request of the Corporation as a director, officer, employee, agent, partner, member, managing member, manager or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise; and (B) "Proceeding" shall mean any threatened, pending, or completed action, suit or proceeding (including, without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative, or investigative.

(ii) Each Indemnitee shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Nevada law, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding; provided that such Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner such Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any Proceeding that is criminal in nature, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the Indemnitee is liable pursuant to NRS 78.138 or did not act in good faith and in a manner in

which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, or that, with respect to any criminal proceeding he or she had reasonable cause to believe that his or her conduct was unlawful. The Corporation shall not indemnify an Indemnitee for any claim, issue or matter as to which the Indemnitee has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Corporation or for any amounts paid in settlement to the Corporation, unless and only to the extent that the court in which the Proceeding was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such amounts as the court deems proper. Except as so ordered by a court and for advancement of expenses pursuant to this Section, indemnification may not be made to or on behalf of an Indmenitee if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or a knowing violation of law and was material to the cause of action.

(iii) Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators.

(iv) The expenses of directors and officers incurred in defending a Proceeding involving alleged acts or omissions of such director or officer in his or her capacity as a director or officer of the Corporation or while serving in any capacity at the request of the Corporation as a director, officer, employee, agent, partner, member, managing member, manager or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, trust, or other enterprise, must be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the Proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that a director or officer of the Corporation is successful on the merits or otherwise in defense of any Proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred in by him or her in connection with the defense.

(b) *Indemnification of Employees and Other Persons.* The Corporation may, by action of its Board of Directors and to the extent provided in such action, indemnify employees and other persons as though they were Indemnitees.

(c) *Non-Exclusivity of Rights.* The rights to indemnification provided in this Article shall not be exclusive of any other rights that any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation or these Bylaws, agreement, vote of stockholders or directors, or otherwise.

(d) *Insurance.* The Corporation may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or member or managing member of a predecessor limited liability company or affiliate of such limited liability company, or is or was serving at the request of the Corporation as a director, officer, employee, member, managing member or agent

of another Corporation, partnership, limited liability company, joint venture, trust, or other enterprise for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a director, officer, employee or agent, or arising out of his or her status as such, whether or not the Corporation has the authority to indemnify him or her against such liability and expenses.

(e) *Other Financial Arrangements.* The other financial arrangements which may be made by the Corporation may include the following (i) the creation of a trust fund; (ii) the establishment of a program of self-insurance; (iii) the securing of its obligation of indemnification by granting a security interest or other lien on any assets of the Corporation; (iv) the establishment of a letter of credit, guarantee or surety. No financial arrangement made pursuant to this subsection may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud, or a knowing violation of law, except with respect to advancement of expenses or indemnification ordered by a court.

(f) *Other Matters Relating to Insurance or Financial Arrangements.* Any insurance or other financial arrangement made on behalf of a person pursuant to this Section may be provided by the Corporation or any other person approved by the Board of Directors, even if all or part of the other person's stock or other securities is owned by the Corporation. In the absence of fraud (i) the decision of the Board of Directors as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to this Section and the choice of the person to provide the insurance or other financial arrangement is conclusive; and (ii) the insurance or other financial arrangement is not void or voidable and does not subject any director approving it to personal liability for his action; even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

7.02 *Amendment.* The provisions of this Article VII relating to indemnification shall constitute a contract between the Corporation and each of its directors and officers which may be modified as to any director or officer only with that person's consent or as specifically provided in this Section. Notwithstanding any other provision of these Bylaws relating to their amendment generally, any repeal or amendment of this Article which is adverse to any director or officer shall apply to such director or officer only on a prospective basis, and shall not limit the rights of an Indemnitee to indemnification with respect to any action or failure to act occurring prior to the time of such repeal or amendment. Notwithstanding any other provision of these Bylaws (including, without limitation, Article VIII below), no repeal or amendment of these Bylaws shall affect any or all of this Article VII so as to limit or reduce the indemnification in any manner unless adopted by (a) the unanimous vote of the directors of the Corporation then serving, or (b) by the stockholders as set forth in Article VIII hereof; provided that no such amendment shall have a retroactive effect inconsistent with the preceding sentence.

ARTICLE VIII
AMENDMENT OR REPEAL

8.01 *Amendment or Repeal.* Except as otherwise restricted in the Articles of Incorporation or these Bylaws:

(a) Any provision of these Bylaws may be altered, amended or repealed by the Board of Directors at the annual meeting of the Board of Directors without prior notice, or at any special meeting of the Board of Directors if notice of such alteration, amendment or repeal is contained in the notice of such special meeting.

(b) These Bylaws may also be altered, amended, or repealed at a duly convened meeting of the stockholders by the affirmative vote of the holders of a majority of the voting power of the corporation entitled to vote. The stockholders may provide by resolution that any Bylaw provision altered, amended or repealed by them, or any Bylaw provision adopted by them, may not be altered, amended or repealed by the Board of Directors.

ARTICLE IX
CHANGES IN NEVADA LAW

9.01 *Changes in Nevada Law.* References in these Bylaws to Nevada law or the Nevada Revised Statutes or to any provision thereof shall be to such law as it existed on the date these Bylaws were adopted or as such law thereafter may be changed; provided that (a) in the case of any change which expands the liability of directors or officers or limits the indemnification rights or the rights to advancement of expenses which the corporation may provide in Article VII hereof, the rights to limited liability, to indemnification and to the advancement of expenses provided in the corporation's Articles of Incorporation and/or these Bylaws shall continue as theretofore to the extent permitted by law; and (b) if such change permits the corporation, without the requirement of any further action by stockholders or directors, to limit further the liability of directors or officers or to provide broader indemnification rights or rights to the advancement of expenses than the corporation was permitted to provide prior to such change, then liability thereupon shall be so limited and the rights to indemnification and the advancement of expenses shall be so broadened to the extent permitted by law.

Exhibit 10.1

ASSET AND LAND PURCHASE AGREEMENT
dated as of
April 28 2000
by and among
Starwood Hotels & Resorts Worldwide, Inc.
Sheraton Gaming Corporation
Sheraton Desert Inn Corporation
Valvino Lamore, LLC
and
Stephen A. Wynn

ASSET AND LAND PURCHASE AGREEMENT

This Asset and Land Purchase Agreement (this "*Agreement*") is entered into as of this 28th day of April, 2000 ("*Effective Date*") by and among Starwood Hotels & Resorts Worldwide, Inc., a Maryland corporation ("*Parent*"), Sheraton Gaming Corporation, a Nevada corporation ("*SGC*"); Sheraton Desert Inn Corporation, a Nevada corporation ("*SDIC*"; and together with Parent and SGC, the "*Sellers*"), Valvino Lamore, LLC, a Nevada limited liability company and Stephen A. Wynn ("*Wynn*" and together with Valvino Lamore, LLC, the "*Purchaser*").

RECITALS:

WHEREAS, SDIC is the owner or will as of Closing be the owner of the DI Assets (as defined below);

WHEREAS, SGC is the sole record and beneficial owner of all of the issued and outstanding shares (the "*DIIC Shares*") of the capital stock of Desert Inn Improvement Co., a Nevada corporation ("*DIIC*");

WHEREAS, Parent is the record and beneficial owner of membership interests ("*Interests*") representing 100% of the economic ownership interests in Starwood (HRW) Timeshare LLC, a Delaware limited liability company ("*Starwood Timeshare*"), and in DI Timeshare (Delaware) LLC, a Delaware limited liability company ("*DI Timeshare*");

WHEREAS, Starwood Timeshare is the owner of the Starwood Timeshare Lots (as defined below);

WHEREAS, DI Timeshare is the owner of the DI Timeshare Lots (as defined below)

WHEREAS, upon the terms and subject to the conditions set forth herein, Sellers desire to sell to Purchaser, and Purchaser desires to purchase from Sellers the Assets (as defined below); and

WHEREAS, certain capitalized terms used herein have the meanings assigned to them in Article 11 hereof.

AGREEMENT:

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
PURCHASE AND SALE OF ASSETS

Section 1.1 *Purchase and Sale of Assets.* Upon the terms and subject to the conditions contained herein (including Section 6.6), on the Closing Date, Sellers will sell, convey and transfer, or will cause to be sold, conveyed and transferred to Purchaser, and Purchaser will purchase and acquire, the Assets, free and clear of all Liens, except Permitted Liens. Concurrently with such conveyance, Purchaser will assume all of the Assumed Liabilities.

Section 1.2 *Purchase Price.* The aggregate purchase price for the Assets (the "*Purchase Price*") shall be (i) Two Hundred Seventy Million Dollars ($270,000,000) (the "*Base Price*"), *plus* (or minus if a negative number) (ii) the Closing Capital Amount determined in accordance with Section 1.5 hereof, *plus* (iii) the amount (the "*Capital Expenditure Adjustment Amount*") equal to the actual amount of capital expenditures made by the Sellers during the period between the date hereof and Closing Date, which capital expenditures were (x) required as a result of an emergency or other event or situation beyond the reasonable control of Sellers or (y) necessary in the reasonable judgment of the Sellers, subject to the reasonable approval of Purchaser, to permit the continued operation of the Business in a manner consistent with Section 4.1 hereof.

Section 1.3 *Deposit.*

(a) Upon execution of this Agreement, Purchaser shall deliver to Escrowee the sum of Thirty Million Dollars ($30,000,000) in immediately available funds as a deposit and down payment for the purchase of all Assets other than the Gaming Assets (the "*Deposit*"). The Deposit, exclusive of any Interest earned thereon, shall be credited against the Purchase Price at the Closing, in accordance with the terms hereof. No portion of the Deposit is

intended to be or is attributable to the Gaming Assets, and accordingly, the parties desire that the Deposit be released immediately to Sellers. The parties have determined to seek written confirmation (the "*Gaming Authority Letter*") from the appropriate representatives of the Nevada State Gaming Control Board (the "*Gaming Control Board*") that release of the Deposit, together with interest accrued thereon, to Sellers is permissible under the Nevada Gaming Laws. Accordingly, immediately following execution and delivery of this Agreement, Sellers' gaming counsel will contact the Chief of the Investigations Division of the Gaming Control Board to determine whether the request for the Gaming Authority Letter should be addressed to such person, to the Chairman of the Gaming Control Board, or to some other representative of the Gaming Control Board. Promptly following such contact, Sellers' gaming counsel will request in a writing addressed to the person the Chief of the Investigations Division has indicated they should contact, the prompt issuance of the Gaming Authority Letter, and Purchaser's counsel will join in such request. The parties will use their diligent best efforts to seek the prompt issuance of the Gaming Authority Letter. The Deposit shall be held by Escrowee in an interest-bearing account and/or utilized to purchase marketable instruments, satisfactory to Escrowee, and satisfactory to Sellers in their sole and absolute discretion and at Sellers' sole risk with all interest to accrue for the benefit of, and belong to, Sellers. The Deposit, together with all interest, shall be released to Sellers upon the earliest to occur of the following: (i) receipt of the Gaming Authority Letter; (ii) the occurrence of the Closing in accordance with the terms hereof; or (iii) the failure of the Closing to occur on or before the Outside Date for any reason other than Sellers' breach of a material obligation hereunder. Purchaser hereby absolutely and forever disclaims any ownership interest in the Deposit (but Purchaser shall be entitled to receive the return of an amount equal to the Deposit in the event of Sellers' breach in the performance of its obligations hereunder), and further agrees, that to the extent it nevertheless is deemed to have any interest in the Deposit and/or in the account in which Escrowee maintains the Deposit, Purchaser hereby pledges to Sellers such Deposit, the account in which it is maintained and any and all proceeds thereof as security for Purchaser's obligations hereunder. In connection therewith Sellers shall have all rights and remedies available to secured creditors under applicable Nevada law. Upon release of the Deposit to Sellers, the Deposit, exclusive of interest, shall be credited to the Purchase Price.

(b) Time is of the strictest essence of this Section 1.3

Section 1.4 *Intentionally Omitted.*

Section 1.5 *Purchase Price Adjustment.*

(a) *Estimated Adjustment Amounts.* Not later than five (5) Business Days prior to the Closing, Sellers shall deliver to Purchaser their reasonable good faith estimate of the Net Working Capital as of the Closing Date (the "*Estimated Closing Net Working Capital Amount*") and Sellers' reasonable good faith estimate of the Capital Expenditure Adjustment Amount (the "*Estimated Capital Expenditure Adjustment Amount*"), together with a reasonably detailed explanation of the calculation thereof, including accountants' work papers (to the extent available to Sellers upon diligent best efforts) and other back-up materials pertinent thereto. As set forth in Section 2.2(c), the Estimated Closing Net Working Capital Amount and the Estimated Capital Expenditure Adjustment Amount shall be used to calculate the Closing Date Purchase Price payable at Closing.

(b) *Closing Balance Sheet;* Capital Expenditure Adjustment. As soon as reasonably practicable following the Closing Date and in any event within ninety (90) days thereafter, Purchaser shall prepare and deliver to Sellers (i) a calculation of the Net Working Capital as of the Closing Date (the "*Closing Net Working Capital*"), (ii) a calculation of the actual Capital Expenditure Adjustment Amount (together with reasonable back-up information providing the basis for such calculation), and (iii) all accountants' work papers developed by Purchaser and/or (to the extent available to Purchaser upon diligent best efforts) its outside accountants, and explanatory materials (collectively, the "*Backup Material*") setting forth with specificity any changes from Sellers' calculations delivered pursuant to Section 1.5(a), above, and providing detailed reasons for each such change. Time is of the strictest essence of this provision, and the failure of Purchaser to provide a calculation of Net Working Capital, a calculation of the Capital Expenditure Adjustment Amount or all of the Backup Materials shall be conclusively deemed Purchaser's acceptance of Sellers' calculations pursuant to Section 1.5(a), and no further adjustments shall be made with respect thereto. Closing Net Working Capital shall be calculated in accordance with United States generally accepted accounting principles ("*GAAP*") and on a basis consistent with the preparation of the Reference Balance Sheet. Without limiting the generality of the foregoing, the calculation of Closing Net Working Capital shall reflect reserves against receivables from casino customers that are calculated in accordance with the current practices of SDIC, consistent with sound accounting practices in the hotel and casino industry.

(c) *Disputes.* Immediately upon delivery of Purchaser's calculation of Closing Net Working Capital and the Capital Expenditures Adjustment Amount, Purchaser will provide to Sellers and Sellers' accountants full access to the personnel and books and records of Purchaser to the extent reasonably related to a review of the Purchaser's calculation of the Closing Net Working Capital and the Capital Expenditure Adjustment Amount, which review may include review and analysis of transactions and operations of the Business during periods following the Closing. Purchaser shall not take any actions with respect to its books and records or any of the books and records of the Companies that would obstruct or prevent the determination of Closing Net Working Capital and the Capital Expenditure Adjustment Amount. If Sellers disagree with the Purchaser's calculation of the Closing Net Working Capital, the Capital Expenditure Adjustment Amount or any element relevant thereto, they shall notify Purchaser of such disagreement in writing within forty-five (45) days after Sellers' receipt of Purchaser's calculation of the Closing Net Working Capital and the Capital Expenditure Adjustment Amount and the Backup Materials, which notice shall set forth in detail the particulars of such disagreement. Such forty-five (45) day period shall be extended, day for day, for each day that Purchaser fails to provide full access as described above or any portion of the Backup Materials. In the event that Sellers do not provide such a notice of disagreement within such forty-five (45) day period (as the same may be extended), Sellers shall be deemed to have accepted Purchaser's calculation of the Closing Net Working Capital and the Capital Expenditure Adjustment Amount delivered by Purchaser which shall be final, binding and conclusive for all purposes hereunder. In the event any such notice of disagreement is timely provided by Sellers, Purchaser and Sellers shall use their reasonable best efforts for a period of thirty (30) days (or such longer period as they may mutually agree) to resolve any disagreements with respect to the calculation of the Closing Net Working Capital and the Capital Expenditure Adjustment Amount. If, at the end of such period, they are unable to resolve such disagreements, the Auditor shall resolve any remaining disagreements. The Auditor shall determine as promptly as practicable, but in any event within forty (40) days of the date on which such dispute is referred to the Auditor, based solely on written submissions forwarded by Purchaser and Sellers to the Auditor within ten (10) days following submission to the Auditor, whether the calculation of the Closing Net Working Capital and the Capital Expenditure Adjustment Amount was made in accordance with the standards set forth in Section 1.2(a) and (only with respect to the remaining disagreements submitted to the Auditor) whether and to what extent (if any) the Closing Net

Working Capital and the Capital Expenditure Adjustment Amount determination require adjustment. The Sellers on the one hand, and Purchaser on the other hand, shall each bear 50% of the fees and expenses of the Auditor. The determination of the Auditor shall be final, conclusive and binding on the parties and shall be treated as an arbitration award for purposes of enforcement thereof, provided, however, that the foregoing shall not be construed to bind the Auditor to any other law governing arbitration or to require the Auditor to hold any hearings in connection with its proceeding. The date on which the Closing Net Working Capital and the Capital Expenditure Adjustment Amount is finally determined in accordance with this Section 1.5(c) is referred as to the "*Determination Date*."

(d) *Payment.* If the Closing Net Working Capital plus the Capital Expenditure Adjustment Amount is greater than the Estimated Net Working Capital Amount plus the Estimated Capital Expenditure Adjustment Amount (such difference, the "*Increase Amount*"), then within ten (10) Business Days after the Determination Date, Purchaser shall pay to Sellers an additional amount equal to the Increase Amount, together with interest thereon calculated from the Closing Date to the date of payment at the Applicable Rate. If the Estimated Net Working Capital Amount plus the Estimated Capital Expenditure Adjustment Amount is greater than the Closing Net Working Capital plus the Capital Expenditure Adjustment Amount (such difference, the "*Deficit Amount*"), then within ten (10) Business Days after the Determination Date, Sellers shall pay to Purchaser an amount equal to the Deficit Amount, together with interest thereon calculated from the Closing Date to the date of payment at the Applicable Rate.

ARTICLE 2
INSPECTIONS; WAIVER OF DUE DILIGENCE; ESCROW

Section 2.1 *Waiver of Purchaser's Due Diligence.* Purchaser acknowledges that it is familiar with the Assets and has had opportunities, directly or through its representatives to inspect the Assets. Without limitation of the foregoing, Purchaser acknowledges that the Purchase Price has been negotiated based on Purchaser's express agreement to waive all contingencies to closing other than Sellers' performance of its obligations set forth in this Agreement. Further, Purchaser acknowledges that it has waived and hereby waives any due diligence reviews, inspection or examination with respect to the Assets, including without limitation with respect to engineering, environmental, title, survey, financial, operational and legal compliance matters.

(a) *Purchaser's Inspections.* Solely for purposes of assisting Purchaser in the transition of the Assets to the Purchaser's ownership, Purchaser, through its employees, agents and representatives ("*Purchaser's Inspectors*"), shall have the right, subject to the rights of tenants, to perform such examinations, tests, investigations and studies of the Assets and the Business (the "*Infections*") as Purchaser reasonably deems desirable, in accordance with this Section 2.1, and Sellers shall provide reasonable access to the Business Premises for Purchaser's Inspections to perform the Inspections; provided, however, that (i) Purchaser shall provide Parent with at least twenty-four (24) hours' prior notice of each of the Inspections; (ii) at Sellers' request, Purchaser's Inspectors shall be accompanied by an employee, agent or representative of Purchaser; (iii) Purchaser shall not initiate contact with employees or representatives of the Sellers other than Marc Rubinstein and/or Mark Lefever or other individuals designated by either of them and, at Sellers' option, an employer's representative or agent of Sellers may be present at all inspections; (iv) the Inspections shall be conducted by Purchaser's Inspectors on a business day between 8:00 a.m. and 5:00 p.m. (local time); (v) Purchaser's Inspectors shall not perform any drilling, coring or other invasive testing, without Sellers' prior written consent, which consent shall not be unreasonably withheld; (vi) the Inspections shall not unreasonably interfere with the operation of the Business, and Purchaser's Inspectors shall comply with Sellers' requests with respect to the Inspections to minimize such interference; and (vii) in no event shall the results of any such

inspection or Purchaser's satisfaction therewith be a condition to Purchaser's obligations hereunder, it being the intent of Purchaser to purchase the Assets and Interests on an "As Is, Where Is" basis, as more fully set forth in Section 3.3 hereof.

(b) *Sellers' Materials.* Purchaser acknowledges receipt of the materials listed on Schedule 2.1(b) and Schedule 2.1(e) hereto. All documents and materials provided by Sellers to Purchaser pursuant to this Agreement are referred to collectively herein as the "*Sellers' Materials*". Purchaser acknowledges and agrees that Purchaser's review of such materials or satisfaction therewith shall not be a condition to Purchaser's obligations hereunder, it being the intent of Purchaser to purchase the Assets in their "As Is, Where Is" condition as more fully set forth in Section 3.3 hereof.

(c) *Purchaser's Reports.* If requested by Sellers, Purchaser shall provide a copy to Sellers of all environmental studies, reports, and assessments prepared by any Person for or on behalf of Purchaser in connection with the Inspections (the "*Purchaser Reports*"), and if also requested by Sellers, at Sellers' cost and expense, Purchaser shall use commercially reasonable efforts to obtain an original of any such Purchaser Reports for Sellers, together with a reliance letter from such Person in favor of Sellers. This Section 2.1(c) shall survive the termination of this Agreement and the Closing.

(d) *Release and Indemnification.* Purchaser shall, at its cost and expense, repair any damage to the Business Premises and the Assets or any other property owned by a Person other than Purchaser arising from or in connection with the Inspections, and restore the Business Premises and the Assets or such other third-party property to the same condition as existed prior to such Inspections. Purchaser shall indemnify and hold harmless Parent, the Sellers and their Subsidiaries and Affiliates from and against any Losses incurred by Parent, Sellers, their subsidiaries or affiliates, arising from or in connection with the Inspections, save and except only those Losses caused by Sellers' gross negligence or intentional misconduct. This Section 2.1(d) shall survive the termination of this Agreement and the Closing.

(e) Attached hereto as Schedule 2.1(e) are the preliminary title reports for the Real Property Assets and the real property of the Companies (respectively, "*Title Report A*" and "*Title Report B*" and collectively, "*Title Reports*"). All title exceptions shown on the Title Reports other than Items 101-105 of Title Report A and items 17-22 of Title Report B, being the so called "requirements" items and on the surveys listed on Part II of Schedule 2.1(e) (collectively, the "*Survey*"), copies of which have been delivered to Purchaser, are hereinafter referred to as the "*Permitted Exceptions*". The Permitted Exceptions shall also include those other title exceptions which are disclosed or which become apparent to Purchaser after the Effective Date, which are not already Permitted Exceptions, which are not caused by the intentional act or omission of a Seller after the date of the Title Reports and which do not materially adversely affect the value of the Real Property Assets, or as to which Purchaser has not timely objected. Purchaser must notify the Sellers in writing of Purchaser's objection to any such subsequently arising matter on or before the date that is five (5) Business Days after Purchaser's receipt of notice thereof, and Purchaser shall only object to such title exceptions as would materially adversely affect the value of the Real Property Assets or Purchaser's ownership thereof or the use thereof consistent with the Sellers' current use. The Sellers shall use commercially reasonable efforts to cause all title exceptions (other than Permitted Exceptions) properly and timely objected to by Purchaser ("*Unpermitted Exceptions*") to be removed on or before the Closing. Sellers, however, shall have the right to (i) cause the Title Insurer to remove a lien by bonding over it or (ii) obtain the commitment of the Title Insurer to insure Purchaser against loss or damage that may be occasioned by such Unpermitted Exceptions. If Sellers are unable to bond over or cure any Unpermitted Exceptions prior to Closing or to obtain affirmative title insurance therefor, Sellers shall have the right to postpone the Closing and

extend the Closing Date for up to thirty (30) days by providing written notice to Purchaser no later than three (3) Business Days prior to the originally scheduled Closing Date.

(f) *ADEQUACY OF INFORMATION.* PURSUANT TO THIS AGREEMENT, SELLERS WILL MAKE AVAILABLE TO PURCHASER CERTAIN REPORTS, ENVIRONMENTAL ASSESSMENTS AND OTHER WRITTEN STUDIES CONCERNING THE PROPERTY, INCLUDING SELLERS' MATERIALS. PURCHASER ACKNOWLEDGES, WARRANTS AND AGREES THAT EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARENT NOR SELLERS SHALL BE RESPONSIBLE FOR NOR LIABLE FOR, AND MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ABOUT THE CONTENT, THE ACCURACY OR COMPLETENESS OF ANY DOCUMENTS OR INFORMATION PREPARED BY ANY SOURCE OTHER THAN SELLERS, INCLUDING, WITHOUT LIMITATION, INFORMATION CONTAINED IN OR DISCLOSED BY TITLE REPORTS, SURVEYS OR ENVIRONMENTAL STUDIES, WHETHER PREPARED FOR OR BY ANY FORMER OWNER OF THE BUSINESS OR THE ASSETS, PURCHASER, OR ANY OTHER PERSON OTHER THAN SELLERS. PURCHASER ACKNOWLEDGES, REPRESENTS, WARRANTS, AND AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT PURCHASER HAS NOT RELIED, AND SHALL NOT RELY, ON PARENT OR SELLERS IN ANY MANNER WHATSOEVER WITH RESPECT TO ANY SUCH DOCUMENTS OR INFORMATION. PURCHASER REPRESENTS, WARRANTS AND AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PURCHASER SHALL HAVE NO RIGHTS AGAINST PARENT OR SELLERS AS A CONSEQUENCE OF ANY INFORMATION OR MISINFORMATION, ANY INACCURACIES IN, OR THE COMPLETENESS OR INCOMPLETENESS OF, ANY DOCUMENTS OR INFORMATION PROVIDED BY OR ON BEHALF OF, PARENT OR SELLERS, OR ANY OTHER PERSON OR ENTITY. NEITHER PARENT OR SELLERS SHALL HAVE ANY OBLIGATION TO PROVIDE TO, OR MAKE AVAILABLE TO PURCHASER ANY DOCUMENTS OR INFORMATION, EXCEPT AS EXPRESSLY REQUIRED BY THE TERMS OF THIS AGREEMENT.

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Purchaser's Initials

Section 2.2 *Escrow.*

(a) *Opening.* Concurrently with the execution hereof, Purchaser and Sellers shall open an escrow (the "*Escrow*") with Escrowee by delivery of a fully executed copy of this Agreement to Escrowee, and by Purchaser's delivery to Escrowee of the Deposit. Escrowee will notify Sellers and Purchaser when Escrow has been opened. This Agreement shall constitute joint escrow instructions to Escrowee. In addition, the parties agree to be bound by such other reasonable and customary escrow instructions as may be necessary or reasonably required by Escrowee or the parties hereto in order to consummate the purchase and sale described herein, or otherwise to distribute and pay the funds held in Escrow as provided in this Agreement. In the event of any inconsistency between the terms and provisions of such supplemental escrow instructions and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control, absent an express written agreement between the parties to the contrary which acknowledges this Section 2.2.

(b) *Closing.*

(i) The consummation of the purchase and sale of the Assets and the assumption by Purchaser of the Assumed Liabilities (the "*Closing*") shall take place at 10:00 a.m., local time, on or before June 30, 2000 ("*Outside Date*") following the satisfaction of the conditions to the obligations of the parties set forth in Article 7 hereof (other than those conditions that by their nature are to be fulfilled at Closing), at the offices of Schreck Morris, Purchaser's

counsel, in Las Vegas, Nevada. The day on which the Closing takes place shall be referred to herein as the "*Closing Date*".

(ii) At the Closing, subject to the provisions of Section 6.6, Sellers shall deliver or cause to be delivered to Purchaser (A) one or more stock certificates evidencing the DIIC Shares, duly endorsed in blank or accompanied by a stock power duly executed in blank, (B) grant bargain and sale deeds sufficient to convey all of the Real Property Assets to Purchaser, (C) bills of sale, assignments and other documents sufficient to convey all of the Personal Property Assets to Purchaser, (D) the other documents required to be delivered by Sellers pursuant to Article 7 hereof, and in accordance with the terms hereof, and (E) any other documents or instruments necessary to evidence or effect any of the transactions contemplated hereunder.

(iii) Sellers shall retain the Retained Liabilities as of the Closing Date and shall pay, perform and discharge when due, and shall indemnify Purchaser and their respective parents, subsidiaries and Affiliates against and defend and hold them harmless from the Retained Liabilities. Sellers' obligations under this Section 2.2(b)(iii) will not be subject to offset or reduction by reason of any actual or alleged breach of any representation, warranty or covenant contained in this Agreement or any document delivered in connection herewith or any right or alleged right to indemnification hereunder.

(iv) Purchaser shall assume the Assumed Liabilities as of the Closing Date and shall pay, perform and discharge when due, and shall indemnify Sellers and their respective parents, subsidiaries and Affiliates against and defend and hold them harmless from the Assumed Liabilities. Purchaser's obligations under this Section 2.2(b)(iv) will not be subject to offset or reduction by reason of any actual or alleged breach of any representation, warranty or covenant contained in this Agreement or any document delivered in connection herewith or any right or alleged right to indemnification hereunder.

(v) At the Closing (A) Purchaser shall pay to Sellers the Closing Date Purchase Price less the amount of the Deposit (exclusive of interest) by intra-bank transfer or wire transfer of immediately available funds to an account designated in writing by Sellers, (B) Purchaser shall deliver to Sellers instruments mutually and reasonably satisfactory to the Parties, further evidencing Purchaser's assumption of the Assumed Liabilities and all other documents required to be delivered by Purchaser pursuant to Article 7 hereof, and (C) Purchaser shall deliver to Sellers any other documents or instruments necessary to evidence or effect any of the transactions contemplated hereunder.

(c) The parties acknowledge that the Closing Working Capital Amount and the Capital Expenditure Adjustment Amount will not be determinable until after Closing. Accordingly, notwithstanding anything else in this Article 2 to the contrary, for purposes of calculating the amount of the Closing Date Purchase Price payable on the Closing Date, the Base Price will be increased or decreased (as applicable) pursuant to the definition of Closing Date

Purchase Price by the Estimated Net Working Capital Amount and the Estimated Capital Expenditure Amount. After the Closing, the parties will determine the Closing Net Working Capital and the Capital Expenditure Adjustment Amount, and make such payments of the Increase Amount or the Deficit Amount, as the case may be, as are provided in Section 1.5.

(d) *Receivables; Collection of Racebook and Keno Tickets; Baggage and Safe Deposits*

(i) *Collection of Racebook and Keno Tickets.* Purchaser shall redeem, as SDIC's agent but without any liability therefor, any racebook and keno tickets (from any series in use as of or prior to the Closing Date) of SDIC relating to the use and operation of the Business which are outstanding as of the Closing Date, which are presented by patrons of the Business or

Purchaser for payment within the applicable Nevada statutory time periods for such redemptions. SDIC's racebook and keno tickets, to the extent redeemed by Purchaser during such statutory periods, shall be redeemed as often as weekly by SDIC, upon delivery to SDIC of such SDIC racebook and keno tickets redeemed. SDIC agrees to make arrangements for the additional redemption of its [chips, tokens] and wagers as required by Nevada law.

(ii) *Baggage.* On the Closing Date, representatives of SDIC and Purchaser jointly shall make a written inventory of all baggage, boxes and similar items checked in or left in the care of SDIC at the Business Premises, and SDIC shall deliver to Purchaser the keys to any secured area which such baggage and other items are stored (the "*Inventoried Baggage*"). Purchaser shall be responsible for, and shall indemnify SDIC from and against any Losses incurred, with respect to any theft, loss or damage to any Inventoried Baggage from and after the time of such inventory, and any other baggage, boxes or similar items left in the care of Purchaser. SDIC shall be responsible for, and shall indemnify the Purchaser from and against any Losses incurred, with respect to any theft, loss or damage to any Inventoried Baggage prior to the time of such inventory, and any other baggage, boxes or similar items left in the care of Sellers. This Section 2.2(d)(ii) shall survive the Closing.

(iii) *Safe Deposit Boxes.* Prior to the Closing, SDIC shall notify all guests or customers who are then using a safe deposit box at the Business Premises advising them of the pending change in ownership and operation of the Business and requesting them to conduct an inventory and verify the contents of such safe deposit box. All inventories by such guests or customers shall be conducted under the joint supervision of representatives of SDIC and Purchaser. Upon such inventory and verification, SDIC shall deliver to Purchaser all keys, receipts and agreements for such safe deposit box (and thereafter such safe deposit box shall deemed an "*Inventoried Safe Deposit Box*"). If the Closing does not occur on the Closing Date for any reason whatsoever, Purchaser immediately shall return all keys, receipts and agreements to SDIC for such Inventoried Safe Deposit Boxes. Upon the Closing, SDIC shall deliver to Purchaser all keys in SDIC's possession for all safe deposit boxes not then in use, and a list of all safe deposit boxes which are then in use, but not yet inventoried by the depositor (the "*Non-Inventoried Safe Deposit Boxes*"), with the name and address or room number of such depositor. After the Closing, SDIC and Purchaser shall make appropriate arrangements for guests and customers at the Business Premises to inventory and verify the contests of the Non-Inventoried Safe Deposit Boxes, and upon such inventory and verification, SDIC shall deliver to Purchaser all keys, receipt and agreements for such safe deposit box (and such safe deposit box thereafter shall constitute an Inventoried Safe Deposit Box). Purchaser shall be responsible for, and shall indemnify the Seller Indemnified Parties from and against any Losses incurred with respect to, any theft, loss or damage to the contents of any safe deposit box from and after the time such safe deposit box is deemed an Inventoried Safe Deposit Box pursuant to this Section 2.2(d)(iii) SDIC shall be responsible for, and shall indemnify the Purchaser Indemnified Parties from and against any Losses incurred, with respect to, any theft, loss or damage to the contents of any safe deposit box prior to the time such safe deposit box is deemed an Inventoried Safe Deposit Box. This Section 2.2(d)(iii) shall survive the Closing.

(iv) *Valet Parking.* At the Closing, an authorized representative of SDIC shall perform the following functions for all motor vehicles that were checked and placed in the care of SDIC: (x) mark all motor vehicles with a sticker or tape; (y) prepare an inventory ("*Inventoried Vehicles*") of such items indicating the check number applicable thereto; and (z) transfer control of the Inventoried Vehicles to an authorized representative of Purchaser and secure a receipt for the Inventoried Vehicles. Thereafter, Purchaser shall be responsible for the Inventoried Vehicles.

(v) *Removal of Starwood Proprietary Property.* Sellers, at their cost and expense, shall have the right to remove or abandon any supplies and other personal property located at the Business Premises which bear any of the Starwood Proprietary Marks on or prior to the Closing Date. If Sellers abandon any such supplies or other personal property at the Business Premises, Purchaser shall not use any such supplies or other personal property, signs or fixtures at the Business Premises which bear any Starwood Proprietary Marks, or use any Starwood Proprietary Marks in any advertising or promotions for the Business. Purchaser, at its cost and expense, shall remove any signs and fixtures at the Business Premises which bear any of the Starwood Proprietary Marks no later than fifteen (15) days after the Closing Date. If Purchaser does not remove all such signs and fixtures within such fifteen (15) day period, Sellers shall have the right, at Sellers' cost and expense, to enter onto the Business Premises and remove such signs and fixtures therefrom. This Section 2.2(d)(v) shall survive the Closing.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

Section 3.1 *Representations and Warranties of the Sellers.* Each Seller, as applicable, represents and warrants to Purchaser, with respect to such Seller's respective organization and existence and the Assets owned by such Seller, except as otherwise contemplated by this Agreement, as follows:

(a) *Corporate Organization of the Companies.* Each of the Sellers and the Companies has been duly organized and is validly existing as a corporation or limited liability company, as applicable, in good standing under the laws of its jurisdiction of organization and has the corporate or limited liability company power and authority, as applicable, to own and lease its properties and to conduct its business as it is now being conducted. The copies of the Charter Documents of the Companies previously delivered by the Sellers to Purchaser are true, correct and complete. Each of the Sellers and Companies not organized under the laws of the State of Nevada is duly licensed or qualified and in good standing as a foreign corporation or limited liability company, as applicable, in the State of Nevada, except where any failures to be so licensed or qualified would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) *Capital Stock of Companies.* The DIIC Shares and the Interests constitute all the authorized, issued and outstanding shares of capital stock of, or other ownership interests in, the Companies. The DIIC Shares and the Interests have been duly authorized and validly issued, and the DIIC Shares are fully paid and nonassessable and were not issued in violation of any preemptive rights. The Interests constitute all of the authorized, issued and outstanding equity interests of Starwood Timeshare and DI Timeshare. Except for the DIIC Shares and the Interests, there are outstanding (i) no shares of capital stock or other voting securities of the Companies; (ii) no securities of the Companies convertible into or exchangeable for shares of capital stock, equity interests or other voting securities of the Companies; (iii) no subscription rights, options, warrants, calls, commitments, preemptive rights or other rights of any kind to acquire from the Companies; and no obligation of the Companies to issue or sell, any shares of capital stock, equity interests or other voting securities or any securities of the Companies convertible into or exchangeable for such capital stock, equity interests or voting securities, and (iv) no equity equivalents, interests in the ownership or earnings of, or stock appreciation, phantom stock or other similar rights of or with respect to the Companies. SGC is the sole record and beneficial owner of the DIIC Shares and Parent is the sole record and beneficial owner of the Interests. Upon consummation of the transactions contemplated in this Agreement, Purchaser will acquire good and valid title to the DIIC Shares and Interests, free and clear of all Liens except Permitted Liens, and the DIIC Shares will be fully paid and nonassessable.

(c) *Due Authorization.* Subject to Section 6.6 hereof, each of the Sellers has the requisite corporate or limited liability power and authority, as applicable, to execute and deliver this

Agreement and to perform all obligations to be performed by it hereunder; the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by each Seller and no other proceeding on its part is necessary to authorize this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of the Sellers, and constitutes a legally valid and binding obligation of each of them, enforceable against each of the them in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(d) *No Conflict.* Except as set forth in Schedule 3.1 (d) hereto, the execution and delivery of this Agreement by each of the Sellers, and the consummation of the transactions contemplated hereby by the Sellers, does not and will not violate any provision of or result in the breach of, or terminate any material rights or accelerate any material obligations of the Sellers or the Companies under, or result in the creation of any Lien other than Permitted Liens on the Assets pursuant to, (i) the Charter Documents of the Sellers, (ii) any Contract listed on Schedule 3.1(e), or (iii) any order, judgment, decree, law, rule or regulation of any Governmental Authority, except, in the case of items referenced in Clauses (ii) and (iii), to the extent that the occurrence of any of the foregoing would not, either individually or in the aggregate reasonably be expected to, (x) have a Material Adverse Effect or (y) materially impair the ability of the Sellers to perform their respective obligations under this Agreement.

(e) *Contracts.* The Contracts listed on Schedule 3.1 (e) hereto ("*Disclosed Contracts*"), true, correct and complete copies of which have been delivered to Purchaser concurrently herewith together with the contracts referred to in or permitted by Section 4.1 hereof, constitute or will constitute, to the knowledge of Sellers, all agreements to which Sellers or the Companies are a party, which in each case require aggregate consideration in cash or in kind in excess of $500,000 for the unexpired term thereof relating to the Business. To the Knowledge of Sellers, as of the date hereof, none of the Disclosed Contracts are in material default by the Seller party thereto or by a third party which default has not been heretofore been disclosed in writing to Purchaser, which default could reasonably be expected to have a Material Adverse Effect and all of the Disclosed Contracts are in full force and effect, except that the PGA 2000 Tournament Contract is not yet signed.

(f) *Permits; Gaming Licenses.* Attached hereto as Schedule 3.1(f) is a list of all liquor licenses, Gaming Permits, permits for water rights known to Sellers and other material operating licenses or permits. To Sellers' knowledge, no material default has occurred in the due observance or condition of any Gaming Permit or liquor license or permit for water rights which has not been corrected and no event has occurred which would result in a Material Adverse Effect.

(g) *Personal Property.* Schedule 3.1(g) identifies all fixtures, furnishings and equipment including Gaming Equipment and Intangible Property, used by the Sellers in the operation and maintenance of the Business. Except as set forth on Schedule 3.1(g) and other than such personal property leased by the Sellers pursuant to capitalized leases, all such personal property is owned by such Seller and constitutes a part of the Assets. Except as set forth on Schedule 3.1(g) hereto, the Sellers have or will have at Closing good and valid title to the personal property included in the Assets that are conveyed at Closing, free and clear of all liens, security interests, claims, charges and encumbrances, except Permitted Liens.

(h) *Real Property Assets.* The Real Property Assets constitute all real property owned or leased by the Sellers, the Starwood Timeshare Lots constitute all the real property owned or leased by Starwood Timeshare, the DI Timeshare Lots constitute all the real property owned or leased by DI Timeshare and the DIIC Land constitutes all the real property owned or leased by DIIC. It is

the intent of the parties that all of the real property, including water rights, owned or leased by Sellers or the Companies be conveyed (directly or by way of a stock or membership interest transfer); to the extent that the parties shall discover subsequent to Closing that adjacent parcels or portions thereof owned by any of such parties was not transferred in keeping with the parties' intentions, the parties shall cooperate in good faith to effectuate such transfers following the Closing upon the terms and conditions of this Agreement.

(i) *Undisclosed Liabilities.* Other than (a) Assumed Financing Obligations, (b) environmental liabilities, which are the subject of Section 3.1(j) hereof, (c) liabilities or Actions which are the subject of Section 3.1(k) hereof, (d) employee benefit plans which are the subject of 3.1(1), (e) severance and retention liabilities which are the subject of Article 6, and (f) Contracts, none of the Sellers has any material liabilities or obligations (whether absolute or contingent, liquidated or unliquidated, or due or to become due) of a type required to be reflected or reserved for on a balance sheet prepared in accordance with GAAP or disclosed in the notes thereto, except for liabilities and obligations (i) that are reflected or reserved for on the Reference Balance Sheet or disclosed in the notes thereto, (ii) that have arisen in the ordinary course of business and which would not either individually or in the aggregate, have a Material Adverse Effect or (iii) that are disclosed in Schedule 3.1(i) hereto.

(j) *Environmental Liabilities.* To the Knowledge of the Sellers, true, complete and correct copies of all material written environmental reports, audits, investigations or assessments which have been conducted within the last five (5) years and which are in the possession of any Sellers in respect of the Real Property Assets, the DIIC Land or the Timeshare Lots and the Business, by any attorney, environmental consultant, engineer or other third party engaged for such purpose, have been made available to Purchaser ("*Reports*"). Except as set forth on the Reports, to the knowledge of Sellers, no Hazardous Materials (i) are located on, at, in, under or about any of the Real Property Assets, the DIIC Land or the Timeshare Lots or (ii) have been disposed of, or Released, to, from or at any portion of the Real Property Assets, the DIIC Land or the Timeshare Lots which would be reasonably likely to have a Material Adverse Effect. Except as disclosed on Schedule 3.1(j) hereto, none of the Sellers has received any notice of alleged, actual or potential responsibility for, or any inquiry or investigation regarding, any environmental matter which liability arising therefrom would reasonably be expected to have a Material Adverse Effect.

(k) *Litigation; Judgments.* Except as described on Schedule 3.1(k), there are no material Actions, pending or to the knowledge of Sellers threatened against the Sellers or the Companies or affecting the Sellers' or the Companies' rights with respect to the Business, the Assets, at law or in equity, before any Governmental Authority, nor is any of Sellers aware of any investigation with respect to any of the foregoing or any facts which to their knowledge are reasonably likely to result in any such action, investigation, suit or proceedings affecting the Sellers or the Companies, the Assets or the Business, which items could reasonably be expected to have a Material Adverse Effect. In addition, except as described on Schedule 3.1(k), there are no material judgments, orders, awards or decrees currently in effect against Sellers or the Companies with respect to the ownership, marketing, development or operation of any part of the Assets or the Business.

(l) Employee Plans and ERISA.

(i) Each Employee Plan is listed on *Schedule 3.1(1)*.

(ii) (i) each Welfare Plan and Pension Plan has been maintained and operated in substantial compliance with its terms and the applicable requirements of the Code and ERISA and the regulations issued thereunder and (ii) there are no pending or, to the Knowledge of the Sellers, threatened material litigation or asserted claims with respect to the Welfare Plans or Pension Plans other than claims for benefits in the normal course of business.

(iii) to the Knowledge of Sellers, (i) each Multiemployer Plan has been maintained and operated in substantial compliance with its terms and the applicable requirements of the Code and ERISA and the regulations issued thereunder and (ii) there are no pending or, to the Knowledge of the Sellers, threatened material litigation or asserted claims with respect to the Multiemployer Plans other than claims for benefits in the normal course of business.

(iv) Any material employee benefits programs and arrangements relating to the Business (other than those provided through the Employee Plans) are listed on *Schedule 3.1(1)*. Such employee benefits programs and arrangements have been maintained in substantial compliance with their terms and any applicable requirements of the Code and the regulations issued thereunder and (ii) there are no pending or to the knowledge of the Sellers, threatened material litigation or asserted claims with respect to such programs or arrangements other than claims for benefits in the normal course of business.

(m) *Taxes.*

(i) *Filing of Tax Returns.* All material Tax Returns required to be filed by any of the Companies on or prior to the date hereof have been properly completed and filed on a timely basis and in correct form or appropriate extensions have been timely requested or granted.

(ii) *Payment of Taxes.* With respect to all material Taxes imposed on any of the Companies, or for which any of the Companies is or could be liable, whether to taxing authorities (as, for example, under law) or to other persons or entities (as, for example, under tax allocation agreements), relating to taxable periods or portions of periods ending on or before the Closing Date, all such amounts required to be paid to taxing authorities or others on or before the date hereof have been paid or adequately reserved for on the Reference Balance Sheet.

(iii) *Audit History.* Except as set forth in Schedule 3.1(m), no material issues have been raised (and are currently pending) by any taxing authority in connection with any Tax Return of any of the Companies, and no waivers of statutes of limitation with respect to any such Tax Returns have been given by any of the Companies that have not expired or been revoked and no waivers of statute of limitations have been requested from DIIC. Schedule 3.1(m) also sets forth (i) the taxable years of each Company to which the respective statutes of limitations with respect to Taxes have not expired, and (ii) with respect to such taxable years, those years for which examinations have been completed, those years for which examinations are presently being conducted, those years for which examinations have not been initiated, and those years for which required Tax Returns have not yet been filed. All deficiencies asserted or assessments made as a result of any examinations have been fully paid, or are being contested and an adequate reserve therefor has been established.

(iv) *Liens.* There are no Liens for Taxes (other than for current Taxes not yet due and payable and Taxes being contested pursuant to appropriate proceedings for which adequate reserves have been established) on any of the Assets of the Sellers.

(v) *Safe Harbor Lease Property.* None of the Assets is property required to be treated as being owned by any other person pursuant to the "safe harbor lease" provisions of former Section 168(f)(8) of the bode.

(vi) *Tax-Exempt Use Property.* None of the Assets is "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(vii) *Foreign Person.* No Seller is a person other than a United States person within the meaning of the Code.

(n) *Golf Course.* Except as set forth in Schedule 3.1(n), to the Knowledge of Sellers, and excluding the effect, if any, of all matters of record in the real estate records of Clark County, Nevada, no agreements have been entered into with any Person, including home builders, prospective home buyers, owners, or occupants of the land surrounding the Business, regarding: (A) the right to membership in the golf course included in the Assets or the intent to operate such golf course as private or semi-private country club, (B) the right to play golf on such golf course or (c) the manner in which the Business will be operated, managed, maintained, or improved.

(o) *Private Letter Rulings.* There are no private letter rulings in respect of any Tax pending between DIIC and any Taxing Authority.

(p) *Tax Elections.* All material elections with respect to federal Taxes affecting any of the Companies made on or after January 1, 1996 are set forth in Schedule 3.l(m).

(q) *Section 341(f) Consent.* None of the Companies has filed a consent pursuant to the collapsible corporation provisions of Section 341(f) of the Code (or any corresponding provision of state, local, or foreign income tax law) or agreed to have Section 341(f)(2) of the Code (or any corresponding provision of state, local, or foreign income tax law) apply to any disposition of any asset owned by it.

(r) *Brokers' Fees.* No broker, finder, investment banker or other Person is entitled to any brokerage fee, finder's fee or other commission in connection with the transactions contemplated by this Agreement based upon arrangements made by Sellers or any of their respective Affiliates.

(s) *Governmental Authorities;* Consents. No material consent, approval or authorization of, or material designation, declaration or filing with, any Governmental Authority is required under applicable laws on the part of Sellers with respect to Sellers' execution or delivery of this Agreement or consummation of the transactions contemplated hereby, except for (i) applicable requirements of the HSR Act, (ii) the approval of Governmental Authorities under any Gaming Laws and (iii) approval of the PUC as contemplated under Section 6.6(c) hereof. Sellers have obtained all third party consents including without limitation the consent of Sellers' board, necessary to permit the Sellers' execution, delivery and performance of this Agreement.

Section 3.2 *Representations and Warranties of Purchaser.* Purchaser represents and warrants to Sellers as follows:

(a) *Corporate Organization of Purchaser.* Purchaser has been duly organized and is validly existing as a limited liability company in good standing under the laws of the State of Nevada and is duly qualified and in good standing to do business in each jurisdiction where such qualification and standing is required.

(b) *Due Authorization.* Purchaser has the requisite limited liability company power and authority to execute and deliver this Agreement to which it is a party, and to perform all obligations to be performed by it hereunder and thereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by Purchaser and no other proceeding on its part is necessary to authorize this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Purchaser, and constitutes a legally valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(c) *No Conflict.* The execution and delivery of this Agreement by Purchaser, and the consummation of the transactions contemplated hereby and thereby by Purchaser, does not and

will not violate any provision of, or result in the breach of, any (i) Charter Documents of Purchaser, (ii) any material agreement, indenture or other instrument to which Purchaser or its Affiliates is a party or by which Purchaser or its Affiliates may be bound, or (iii) any order, judgment, decree, law, rule or regulation of any Governmental Authority, except, in the case of items referenced in clauses (ii) and (iii), to the extent that the occurrence of any of the foregoing would not, either individually or in the aggregate, materially interfere with the ability of Purchaser to perform its obligations under this Agreement.

(d) *Litigation and Proceedings.* There are no material Actions pending or, to the knowledge of Purchaser, threatened, against Purchaser or any of its Affiliates which, if determined adversely, would reasonably be expected to have a material adverse effect on the ability of Purchaser to enter into and perform its obligations under this Agreement. There is no unsatisfied judgment or any injunction binding upon Purchaser or any of its Affiliates which would reasonably be expected to have a material adverse effect on the ability of Purchaser to enter into and perform its obligations under this Agreement.

(e) *Governmental Authorities.* Consents. No material consent, approval or authorization of, or material designation, declaration or filing with, any Governmental Authority is required under applicable laws on the part of Purchaser with respect to Purchaser's execution or delivery of this Agreement or consummation of the transactions contemplated hereby, except for (i) applicable requirements of the HSR Act, (ii) the approval of Governmental Authorities under any Gaming Laws and (iii) approval of the PUC as contemplated under Section 6.6(c) hereof. Purchaser has obtained all third party consents including without limitation the consent of MGM Grand, Inc. ("MGM"), necessary to permit the Purchaser's execution, delivery and performance of this Agreement.

(f) *Brokers' Fees.* No broker, finder, investment banker or other Person is entitled to any brokerage fee, finder's fee or other commission in connection with the transactions contemplated by this Agreement based upon arrangements made by Purchaser or any of its Affiliates.

Section 3.3 *Purchase "As Is".*

(a) PURCHASER REPRESENTS TO SELLERS THAT PURCHASER HAS SUBSTANTIAL EXPERIENCE AND EXPERTISE IN THE ACQUISITION OF HOTELS, CASINOS AND RESORTS. PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES, AND REPRESENTS AND WARRANTS TO SELLERS, THAT PURCHASER IS FULLY CAPABLE OF EVALUATING AND HAS EVALUATED THE ASSETS SUITABILITY FOR PURCHASER'S INTENDED USE THEREOF, AND IS PURCHASING THE ASSETS WITH ALL DEFECTS IN THEIR "AS IS" "WHERE IS" CONDITION AND WITH ALL FAULTS. PURCHASER'S DECISION TO PURCHASE THE ASSETS IS NOT BASED ON ANY COVENANT, WARRANTY, PROMISE, AGREEMENT, GUARANTY, OR REPRESENTATION BY SELLERS OR AGENT OR REPRESENTATIVE

OF SELLERS AS TO CONDITION, PHYSICAL OR OTHERWISE, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR PURPOSES OR ANY OTHER MATTER WHATSOEVER EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, NEITHER SELLERS NOR ANY AGENT OR REPRESENTATIVE OF SELLERS HAS MADE, AND PURCHASER SPECIFICALLY WAIVES AND RELINQUISHES ALL RIGHTS, PRIVILEGES AND CLAIMS ARISING OUT OF, ANY ALLEGED REPRESENTATIONS, WARRANTIES (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE), PROMISES,

COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WHICH MAY HAVE BEEN MADE OR GIVEN, OR WHICH MAY BE DEEMED TO HAVE BEEN MADE OR GIVEN, BY SELLERS OR ANY AGENT OR REPRESENTATIVE OF SELLERS, AS TO, CONCERNING OR WITH RESPECT TO (I) THE VALUE OF THE ASSETS; (II) THE INCOME DERIVED OR TO BE DERIVED FROM THE ASSETS; (III) THE SUITABILITY OF THE REAL PROPERTY ASSETS FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE REAL PROPERTY ASSETS; (IV) THE FITNESS OF THE ASSETS FOR ANY PARTICULAR PURPOSE; (V) THE MANNER OR QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF THE REAL PROPERTY ASSETS; (VI) THE NATURE, QUALITY OR CONDITION OF THE ASSETS, INCLUDING WITHOUT LIMITATION, SOILS CONDITION, ANY GRADING OR OTHER WORK PERFORMED ON OR WITH RESPECT TO THE REAL PROPERTY ASSETS, AND THE GEOLOGICAL CONDITION OF THE REAL PROPERTY ASSETS; (VII) THE COMPLIANCE OF OR BY THE REAL PROPERTY ASSETS OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (VIII) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE ASSETS; (IX) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 CFR PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AS ANY OF THE FOREGOING MAY BE AMENDED FROM TIME TO TIME AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING FROM TIME TO TIME; (X) THE PRESENCE, SUSPECTED PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE REAL PROPERTY ASSETS; (XI) THE CONTENT, COMPLETENESS OR ACCURACY OF THE STUDY MATERIALS; (XII) THE CONFORMITY OF THE REAL PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (XIII) DEFICIENCY OF ANY UNDERSHORING; (XIV) DEFICIENCY OF ANY DRAINAGE; (XV) THE FACT THAT THE REAL PROPERTY MAY BE LOCATED ON OR NEAR EARTHQUAKE FAULTS OR IN SEISMIC HAZARD ZONES; (XVI) THE EXISTENCE OR NON-EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE ASSETS; OR (XVII) ANY OTHER MATTER CONCERNING THE NATURE OR CONDITION OF THE ASSETS, PHYSICAL OR OTHERWISE. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THE PURCHASE PRICE OF THE ASSETS REFLECTS THE PARTIES AGREEMENT TO CONVEY THE ASSETS ON AN "AS IS, WHERE IS" BASIS AND PURCHASER HAS SPECIFICALLY AGREED TO DO SO IN ORDER TO INDUCE SELLERS TO ENTER INTO THIS AGREEMENT. PURCHASER FURTHER ACKNOWLEDGES THAT SELLERS ARE NOT LIABLE FOR AND SHALL NOT BE BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY CONSULTANT, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON EMPLOYED OR CONNECTED IN

ANY WAY WITH SELLER. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE ASSETS AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS", "WHERE IS" CONDITION AND BASIS WITH ALL FAULTS, AND SUBJECT TO ALL LAWS, REGULATIONS OR RESTRICTIONS GOVERNING OR LIMITING THE DEVELOPMENT, USE OR OPERATION OF THE ASSETS OR THE BUSINESS, AND THAT SELLERS HAVE NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS OF ANY KIND.

/s/
Purchaser's Initials

ARTICLE 4
COVENANTS AND AGREEMENTS OF SELLERS

Section 4.1 *Conduct of Business.*

(a) From the date hereof through the Closing except as (i) contemplated by this Agreement, or (ii) required by applicable law or any Contract or Employee Plan, or (iii) with the consent of the Purchaser (which shall not be unreasonably withheld or delayed), Sellers shall operate their business in the ordinary course, consistent with prudent business judgment.

(b) Without limiting the generality of Section 4.1(a), prior to the Closing, except as (i) contemplated by this Agreement, (ii) required by applicable law or any Contract or Employee Plan, or (iii) with the consent of Purchaser (which shall not be unreasonably withheld or delayed), Sellers (or where indicated below, the Companies) shall not:

(i) in the case of the Companies, issue, deliver, sell, pledge or otherwise encumber or amend any shares of their capital stock, membership interests, any other voting or equity securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares, interests, voting or equity securities or convertible securities;

(ii) in the case of the Companies, amend their respective Charter Documents;

(iii) acquire or agree to acquire (A) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any Person or other business organization or division thereof or (B) any other material assets, except purchases of inventory, furnishings, equipment and other goods in the ordinary course of business consistent with prudent business judgment;

(iv) sell, lease, license, mortgage or otherwise encumber or subject to any Lien, other than Permitted Liens, or otherwise dispose of any material assets, except as contemplated by any Contract or as necessary for disposal and replacement of obsolete equipment in the ordinary course of business consistent with prudent business judgment;

(v) make any material loans or advances (including, without limitation, furnishing any "markers") or capital contributions to, or investments in, any other Person other than (X) loans, advances or capital contributions to the Sellers, (Y) advances to employees or suppliers in the ordinary course of business consistent with past practice and (Z) extensions of credit to customers in the ordinary course of business and consistent with prudent business judgment;

(vi) except as required to comply with applicable laws or any Employee Plan or any Contract, (A) adopt, enter into or terminate, any material Employee Plan for the benefit or welfare of any director, officer or current or former employee, (B) materially increase in any manner the compensation or fringe benefits of, or pay any bonus to, or amend or enter into any severance agreement with any officers or employees (collectively, "*Personnel*") whose total compensation benefits and other payments for services rendered to the Sellers or the Companies or is currently at an annual rate of more than $100,000 (except for normal increases or bonuses as contractually required pursuant to Contracts or other retention programs for which Sellers are fully responsible or in the ordinary course of business consistent with past practice that, in the aggregate, do not result in a significant increase in benefits or compensation expenses to such Personnel of the Sellers relative to the level in effect prior to such action), (C) except for payments or awards in cash permitted by clause (B), grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or Employee Plan (including the grant of stock options, stock appreciation rights, stock based or stock related awards, performance units or restricted stock, or the removal of existing restrictions in any Employee Plans or agreements or awards made thereunder) or (D) take any action to fund or in any other way secure the payment of compensation or benefits under any Employee Plan other than in the ordinary course of business consistent with prudent business judgment; provided, however, prior to Closing, SDIC shall be entitled to, and shall cause, the employment of the two Rimtech Employees to be transferred to SDIC;

(vii) except in the ordinary course of business consistent with prudent business judgment, materially and adversely modify, amend or terminate any Disclosed Contract or waive, release or assign any material rights or claims thereunder;

(viii) conduct its business in a manner or take, or cause to be taken, any other action that would reasonably be expected to prevent or materially delay Sellers or Purchaser from consummating the transactions contemplated hereby;

(ix) except as required to comply with applicable laws or any Contract or except in the ordinary course of business consistent with prudent business judgment, enter into any Contract that would constitute or that is a significant real property lease or supply agreement which continues in effect for a period of more than 6 months (unless such Contract shall nonetheless be terminable on 30 days notice); provided, however, Purchaser acknowledges that the United Plant Guard Workers of America ("*UPGWA*") have submitted a petition for a representation election currently scheduled for April 28, 2000. In the event UPGWA wins such election, the foregoing shall not be deemed to prohibit SDIC from negotiating and entering into a collective bargaining agreement with such personnel;

(x) Except for any change therefrom approved in writing by Purchaser (such approval not to be unreasonably withheld or delayed), effect any parcelization of the Real Property Assets except substantially in accordance with the specifications of the Corner Land Map, or enter into any agreements with Clark County or grant to Clark County any interest by concession or dedication with respect to the Real Property Assets.

(xi) enter into any settlement agreement with the defendants in that certain litigation with adjacent homeowners pending in the U.S. District Court for the District of Nevada;

(xii) authorize any of, or commit or agree to take any of, the foregoing actions.

Section 4.2 *HSR Act.* Subject to and in furtherance of Section 6.1, in connection with the transactions contemplated by this Agreement, Sellers (and, to the extent required, their Affiliates) shall use their commercially reasonable efforts to comply as expeditiously as possible with the notification and reporting requirements of the HSR Act and use their commercially reasonable efforts to obtain early termination of the waiting period under the HSR Act. Sellers (and to the extent required, their Affiliates) shall use their commercially reasonable efforts to comply with any additional requests for information by any Antitrust Authority.

Section 4.3 *No Solicitations.* Sellers will not, directly or indirectly, (a) solicit any inquiries or proposals or enter into or continue any discussions, negotiations or agreements with a third party relating to (i) the sale or exchange of the Sellers, the Companies, or any of their Assets or capital stock or membership interests, as applicable, (ii) the merger of the Sellers or any of the Companies with, or the direct or indirect disposition of any material assets of the Sellers or the Companies or any portion of the Business to, any Person other than Purchaser or its Affiliates or (b) provide any assistance or any information to or otherwise cooperate with any Person in connection with any such inquiry, proposal or transaction.

Section 4.4 *Notification.* Between the date of this Agreement and the Closing Date, Sellers will promptly notify Purchaser in writing if Sellers become aware of any fact or condition that they believe causes or constitutes a breach of any of the representations and warranties of Sellers as of the date of this Agreement, or if Sellers become aware of the occurrence after the date of this Agreement of any fact or condition that they believe would cause or constitute a breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition, unless in each case such breach of representation and warranty is reasonably expected by Sellers to be cured prior to Closing. Any claim for a breach of covenant

set forth in the previous sentence shall be made only for the incremental Losses due to the failure to comply with such covenant (and not for Losses due to the breach of the underlying representation and warranty). During the same period, Sellers will promptly notify Purchaser of the occurrence of any breach of any covenant of Sellers in this Article 4 or of the occurrence of any event that they believe may make the satisfaction of the conditions in Article 7 impossible or unlikely.

Section 4.5 *Nonforeign Affidavit.* As a condition precedent to the consummation of the transactions contemplated by this Agreement, all Sellers shall furnish Purchaser an affidavit, stating, under penalty of perjury, that the indicated number is the transferor's United States taxpayer identification number and that the transferor is not a foreign person, pursuant to Section 1445(b)(2) of the Code.

Section 4.6 *Water Rights.* Sellers and DIIC shall use commercially reasonable efforts to preserve existing water rights appurtenant to the Real Property Assets or the DIIC Land and/or owned by SDIC or DIIC.

Section 4.7 *Change of Name.* Prior to Closing, Sellers shall have the right to cause the name of Starwood Timeshare to be changed to exclude all references to "Starwood".

ARTICLE 5
COVENANTS AND AGREEMENTS OF PURCHASER

Section 5.1 *Certain Transactions.* Purchaser shall not, and shall not permit any of its Subsidiaries to, acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, partnership,

association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets, if the entering into of a definitive agreement relating to or the consummation of such acquisition, merger or consolidation would reasonably be expected to (i) impose any material delay in the obtaining of, or significantly increase the risk of not obtaining, any authorizations, consents, orders, declarations or approvals of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement or the expiration or termination of any applicable waiting period, (ii) significantly increase the risk of any Governmental Authority entering an order prohibiting the consummation of the transactions contemplated by this Agreement, (iii) significantly increase the risk of not being able to remove any such order on appeal or otherwise or (iv) materially delay or prevent the consummation of the transactions contemplated by this Agreement. Purchaser shall not conduct its business in a manner or take, or cause to be taken, any other action that would reasonably be expected to prevent or materially delay Sellers or Purchaser from consummating the transactions contemplated hereby.

Section 5.2 *HSR Act.* Subject to and in furtherance of Section 6.1, in connection with the transactions contemplated by this Agreement, Purchaser (and, to the extent required, its Affiliates) shall comply promptly with the notification and reporting requirements of the HSR Act and use their reasonable best efforts to obtain early termination of the waiting period under the HSR Act. Purchaser shall substantially comply with any additional requests for information, including requests for production of documents and production of witnesses for interviews or depositions, by an Antitrust Authority. Without limiting the generality of the foregoing, Purchaser shall cause to be filed on or prior to the tenth (10^{th}) Business Day following the execution and delivery of the Agreement all initial applications and filings under the HSR Act.

Section 5.3 *Gaming and Other Licenses.* As soon as practical, but in no event later than ten (10) Business Days following the Effective Date, Purchaser will either file applications with all applicable Governmental Authorities including the Nevada Gaming Authorities, on behalf of Purchaser and the Member of Purchaser for all required gaming licenses (the "*Gaming Permits*"), liquor licenses (the "*Liquor Licenses*") and for all other required licenses (collectively with the Gaming Permits and the Liquor Licenses, the "*Licenses*") in connection with the Business, and all related necessary findings of suitability, registrations and approvals. If Purchaser elects to pursue the Licenses, Purchaser will respond promptly to all requests made by the Nevada Gaming Authorities and/or the alcoholic beverage control authorities, and will not take or omit to take, or permit any Subsidiary to take or omit to take any action which would be reasonably likely to hinder or delay the issuance of the Gaming Permits or the Liquor Licenses. In addition, Purchaser shall, and shall cause each of its Subsidiaries to (and shall use its reasonable efforts to cause each of its Affiliates other than each of its Subsidiaries to), if it is necessary to obtain any regulatory approval for the consummation of the transactions contemplated hereby, disassociate themselves from any Person or Persons deemed, or reasonably likely to be deemed, unsuitable by any Gaming Commission and dispose of any assets which any Gaming Commission requests be disposed of. At or prior to the Closing, Sellers will deliver to Purchaser true, correct and complete copies of material gaming financial reports, if any, filed with respect to the Business with the State of Nevada and/or Nevada Gaming Authorities between the date hereof and the Closing.

Section 5.4 *Notification.* Between the date of this Agreement and the Closing Date, Purchaser will promptly notify Sellers in writing if Purchaser or any of its Subsidiaries becomes aware of any fact or condition that it believes causes or constitutes a breach of any of the representations and warranties of Purchaser as of the date of this Agreement, or if Purchaser or any of its respective Subsidiaries becomes aware of the occurrence after the date of this Agreement of any fact or condition that it believes would cause or constitute a breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition, unless in each case such breach of representation or warranty is reasonably expected by

Purchaser to be cured prior to Closing. Any claim for a breach of covenant set forth in the previous sentence shall be made only for the incremental Losses due to the failure to comply with such covenant (and not for Losses due to the breach of the underlying representation and warranty). During the same period, Purchaser will promptly notify Sellers of the occurrence of any breach of any covenant of Purchaser in this Article 5 or of the occurrence of any event that it believes may make the satisfaction of the conditions in Article 7 impossible or unlikely.

Section 5.5 *Confidentiality.*

(a) Purchaser agrees that all Confidential Information will be kept confidential and that Purchaser and its directors, trustees, officers, employees, advisors, agents, lenders and consultants (collectively "*Representatives*") will not disclose in any manner whatsoever any of the Confidential Information, the fact that the Confidential Information has been made available, or regarding this Agreement, the proposed sale of the Assets or the status thereof; *provided, however,* that Purchaser may make any disclosure of such information (i) to which the Sellers gives their prior consent, (ii) to Purchaser's Representatives to the extent such Representatives need to know such information for the sole purpose of effecting the transactions contemplated by this

Agreement, (iii) as may be required by law, (iv) in connection with any proceedings before any regulatory bodies or agencies, and (v) to the Nevada Gaming Authorities.

(b) The term "*Confidential Information*" means all information and data furnished by Sellers or their Representatives to Purchaser and shall be deemed to include, without limitation, Sellers' Materials, all notes, analyses, compilations, studies, interpretations or other documents prepared by any of the parties or their respective Representatives that contain, reflect or are based upon, in whole or in part, the information furnished to Purchaser or its Representatives by or on behalf of Sellers, or any of their Representatives. The term "Confidential Information" does not include information that (i) was or becomes generally available to the public other than as a result of a disclosure by Purchaser or its Representatives, (ii) was known to Purchaser or its Representatives prior to being furnished to such party by or on behalf of Sellers, or (iii) was or becomes available to Purchaser on a nonconfidential basis from a source other than Sellers or their Representatives; provided, that the source of such information was not known to the recipient to be bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information.

(c) Without limitation of the foregoing, neither Purchaser nor its Representatives shall, prior to the Closing, give any interview or issue any press release or announcement concerning the fact of this Agreement or the transactions contemplated hereby, except in consultation with Sellers. Without limitation of the foregoing, Purchaser shall not convey, other than to its Representatives or financing sources on a need to know basis, information concerning Purchaser's plans for continuation or non-continuation of the Business or continued employment or non-employment of Sellers' employees, or other information the disclosure of which would be likely to have a deleterious impact on the continued conduct of the Business pending the Closing or following termination of this Agreement without the Closing having occurred. A breach of this paragraph shall entitle Sellers to terminate this Agreement for Purchaser's breach, and to retain the Deposit on account thereof. Notwithstanding the foregoing Purchaser and Sellers may make such disclosures as may be required by law, (i) in connection with any proceedings before any regulatory bodies or agencies, and (ii) to the Nevada Gaming Authorities.

Section 5.6 *Transfer.* As a material inducement to Sellers to accept the Purchase Price for the sale of the Assets, Purchaser hereby represents, warrants, covenants and agrees that (a) it has not entered into any agreement, arrangement, understanding or discussions for the sale, transfer or other disposition other than with the Mirage Resorts, Incorporated ("*Mirage*") to any other Person of all or any substantial portion of the Assets, (including without limitation any of the Real Property Assets, any

of the residential lots currently owned by Starwood Timeshare or DI Timeshare, and the water rights currently held by SDIC and/or DIIC), or of a controlling interest in Valvino Lamore, LLC, or of any successor in interest to Purchaser controlled by Wynn; that (b) prior to the Closing, it will not enter into any such agreement, arrangement or understanding or undertake, entertain or participate in any such discussions other than as permitted under Section 12.3; and that (c) for at least one (1) year following the Closing Date, without the consent of Parent, which Parent may withhold in its sole and absolute discretion, neither Purchaser nor any successor or assign of Purchaser will, or will permit, the Companies, to enter into any such agreement, arrangement or understanding or undertake, entertain or participate in any such discussions; provided, however, in the event the merger contemplated to occur between Mirage and MGM shall not occur, Purchaser shall be entitled, to convey the Assets to Mirage or an Affiliate of Mirage, provided such transferee shall agree to be bound by and shall assume all of the obligations under this Section 5.6. In the event that Parent consents to same, or in the event Purchaser (or its successors or assigns) violates the foregoing covenant, or a court of competent jurisdiction determines that such covenant is unenforceable in whole or in part, and if in the further event Purchaser or any successor or assign to Purchaser controlled by Wynn shall sell, transfer or otherwise dispose of any of the Assets (including without limitation any of the Real Property Assets, any of the residential lots owned by Starwood Timeshare or DI Timeshare, and the water rights held by SDIC and/or DIIC), or any controlling interest in Purchaser or successor to Purchaser, or shall enter into any agreement with respect to the same, within the one (1) year period following the Closing, then Sellers shall further be entitled to receive, and Purchaser hereby covenants and agrees to pay to Sellers within ten (10) days of receipt thereof an amount equal to twenty (20%) percent of the proceeds derived by Purchaser, Starwood Timeshare, DI Timeshare and/or Purchaser's successor or assign from any such sale, transfer or other disposition.

Section 5.7 *Timeshare; Right of First Refusal.* At any time and from time to time during the ten (10) year period following the Closing ("*Right of First Refusal Period*"), Purchaser shall not engage in discussions or negotiate or enter into any contract for development, construction, marketing or sale of interval sales or timeshare units ("*Timeshare Units*") on any portion of the Real Property Assets, the DIIC Land or the Timeshare Lots, or any real property abutting any of the foregoing (collectively, the "*Timeshare Real Property*"), nor shall Purchaser commence or enter into or negotiate any contract to commence the development, construction, marketing or sale of timeshare units on any portion of the Timeshare Real Property (collectively, "*Timeshare Development*") except in compliance with the following terms and conditions. If Purchaser shall receive from, or determine to extend to, any party other than Parent, a good faith offer to participate in any Timeshare Development, or if Purchaser shall determine to initiate a Timeshare Development with or without the participation of other parties, then Purchaser shall, not do so unless Purchaser shall have first delivered to Parent written notice ("*Timeshare Initiation Notice*") describing in detail (i) the offer ("*Offer*") which Purchaser has received or (ii) the Timeshare Development which Purchaser has determined to initiate and setting forth the details of such Timeshare Development, including without limitation, the location of the development and the number of units to be included therein. Upon receipt of the Timeshare Initiation Notice, Parent shall be entitled within the 30 day period following such receipt to accept, directly or through an Affiliate, the Offer in the case of clause (i) or to elect to participate, directly or through an Affiliate, with Purchaser in the case of clause (ii) ("*Participation*"). The Participation by Parent or its Affiliate would be accomplished by the formation of a joint venture between Purchaser and Parent or its Affiliate pursuant to which (x) such joint venture would bear all costs of development, construction, management, marketing and sale, and capital (with real property contributed at its appraised fair market value) would be contributed and profits distributed between Purchaser and Parent or its Affiliates on a $^{50}/_{50}$ basis, (y) such joint venture would have a 10-year exclusive right to initiate Timeshare Developments at any location on the Timeshare Property, and (z) such joint venture will be entitled to have provided to it customary development, hospitality, marketing and administrative services, all such services to be provided for reasonable and customary fees as agreed by the parties. All

other terms of the joint venture shall be consistent with the foregoing and shall be negotiated in good faith by Purchaser and Parent. In the event that Parent shall either fail to timely notify Purchaser of its desire, or shall elect not, to accept the Offer or enter into the Participation, Purchaser shall be entitled to consummate the Offer on exactly the terms thereof or to initiate the Timeshare Development as described in clause (ii), without the participation of any other party. In the event that the Offer has not been consummated or the Timeshare Development initiated within the six month period following Parent's election or deemed election not to proceed, then Purchaser shall not initiate the Timeshare Development as contemplated in the Timeshare Initiation Notice without again first complying with the foregoing procedures. Parent's rights hereunder shall apply to each and every Timeshare Development proposed within the Right of First Refusal Period and Parent's decision not to accept any particular Offer or to enter into any particular Participation shall not constitute a waiver of Parent's rights hereunder as to any subsequent Offer or Participation. Concurrently with the Closing, Parent shall be entitled to record a memorandum of this Section 5.7 against the Real Property

Assets, DIIC Land and the Timeshare Lots. The terms of this Section 5.7 shall be binding on the successors and assigns of Purchaser, including without limitation, any permitted transferee of purchaser under Section 5.6 or Section 12.3 hereof or any subsequent purchaser of all or any of the Timeshare Real Property, and shall inure to the benefit of Parent, its Affiliates and their respective successors and assigns.

ARTICLE 6
JOINT COVENANTS AND AGREEMENTS

Section 6.1 *Support of Transaction.*

(a) Each of Sellers and Purchaser agree to cooperate with respect to the notices and filings to be made in connection with the consents, approvals, waivers and authorizations required in connection with the transactions contemplated hereby. Each of Sellers and Purchaser shall (i) use its commercially reasonable and diligent efforts to assemble, prepare and file any information (and, as needed, to supplement such information) as may be necessary to obtain as promptly as practicable all governmental and regulatory consents required to be obtained by it in connection with the transactions contemplated hereby (including in respect of any Gaming Law), (ii) use its commercially reasonable diligent efforts to obtain all material consents and approvals of third parties that any of Sellers, Purchaser or their respective Affiliates is required to obtain in order to consummate the transactions contemplated hereby, and (iii) take such other action as may reasonably be necessary or as another party may reasonably request to satisfy the conditions of Article 7 or otherwise to comply with this Agreement, and to complete resolution of various pending title matters. In connection therewith and not in limitation thereof, each party shall take or cause to be taken all actions reasonably necessary in relation to (i) obtaining of all necessary waivers, consents, authorizations and approvals from Governmental Authorities or other parties and the making of necessary registrations and filings and the taking of all steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Authority, and (ii) the defending of any legal proceedings challenging the consummation of any of the transactions contemplated by this Agreement.

(b) In furtherance of the foregoing, Purchaser agrees that it will comply with any requirements imposed by Governmental Authorities as a condition of Purchaser's obtaining any Regulatory Authorizations required to be obtained by it in order to consummate the transactions contemplated hereby.

(c) In furtherance of the foregoing, Sellers agree that they will use their reasonable best efforts to obtain consents required under Contracts, or other third party consents required to consummate the transactions contemplated hereby ("*Third Party Consents*"), and Purchaser will cooperate in all reasonable respects, and work together with Parent to obtain such Third Party Consents; *provided, however,* that Sellers shall not be required to make any material expenditures

to obtain such Third Party Consents. Further, if any such consent is not obtained Sellers shall reasonably cooperate with Purchaser to provide for Purchaser the benefit, monetary or otherwise, of any such Contract including enforcement of any and all rights of Sellers against the other party thereto arising out of any breach or cancellation thereof by such party or otherwise. Any such cooperation shall not cause Sellers to violate any such Contract.

Section 6.2 *Approvals.* Each of Purchaser and Sellers shall as promptly as practicable, but in no event later than ten (10) Business Days following the execution and delivery of this Agreement, file or submit any applications, filings and other submissions required by applicable laws or by Governmental Authorities in connection with obtaining all necessary regulatory consents, approvals, waivers and authorizations, other than the Licenses and approvals under the HSR Act which are the subject of other provisions in this Agreement, required to be obtained prior to the Closing, (the "*Regulatory Authorizations*") and to respond to any requests from Government Authorities and promptly file any additional information required in connection with such filings as promptly as practicable after receipt of requests therefor. Each of Purchaser and Sellers agree to cooperate with and promptly to consult with, to provide any reasonably available information with respect to, and to provide the other party (and its counsel) advance drafts and copies of all presentations and filings to be made in connection with the Regulatory Authorizations, including, without limitation, the Licenses and approval under the HSR Act. Purchaser and Sellers shall keep each other promptly and regularly apprised of the status of any communications with, and any inquiries or requests for additional information from, the Gaming Authorities and shall comply promptly with any such inquiry or request.

Section 6.3 *Certain Employee Benefits Matters.*

(a) Effective as of the Closing Date, the Sellers' employment of each of the employees of the Business (including two employees ("*Rimtech Employees*") currently employed by Rimtech Marketing Incorporated) ("*Transferring Employees*") shall cease and the Transferring Employees shall immediately become employees of Purchaser at the base compensation and wage levels in effect as of the Closing Date. Transferring Employees shall be employees at will and nothing in this Agreement shall create any obligation on the part of Purchaser to continue the employment of any Transferring Employee for any period of time. However for the period beginning on the Closing Date and ending on the first anniversary of the Closing Date, Purchaser shall provide employee benefit welfare and retirement plans and programs to the Transferring Employees (while continuing in the employ of Purchaser) that are substantially similar in the aggregate to the employee benefit plans and programs listed on *Schedule 3.1(1)*. The employment by Purchaser of each Union Employee shall be done in accordance with the terms of each applicable collective bargaining agreement pertaining to such Union Employee. With regard to Union Employees, Purchaser shall (i) recognize each labor union representing Union Employees as their exclusive bargaining representative, (ii) assume, and become party to and bound by the terms and conditions of, each applicable collective bargaining agreement until the respective expiration date of the current term of each applicable collective bargaining agreement without respect to any renewals, extensions or modifications therein or thereto, (iii) comply with its legal obligations under Federal labor law with regard to Union Employees, and (iv) treat service with the Sellers and their Affiliates prior to the Closing Date in the same manner as such service has been recognized by the Sellers for purposes of determining seniority rights and benefits under the applicable collective bargaining agreement (except where recognition of such service by Purchaser would result in a duplication of benefits provided). Except as otherwise required by the terms of any such plan or applicable law, as of the Closing Date all Transferring Employees shall cease in participation in, and shall cease accruing any benefits under, any Pension Plan and Welfare Plan.

(b) *Severance.* Purchaser shall become responsible for payment, to any Transferring Employee, of any severance or other similar compensation and benefits under any Employee Plan or other agreement with any such employee, which are or may become payable by Sellers or their

respective Affiliates, as a result of the termination of any such employee by Purchaser, as of and following the Closing or which are or may become payable in connection with or as a result of the transactions contemplated hereby. Purchaser shall also reimburse Sellers for payment of such compensation and benefits to any such employee with respect to whom Purchaser indicates, whether directly or by failure to affirm its intention to maintain such person's employment following the Closing, that Purchaser does not wish such employee to continue in his or her current capacity and compensation level following the Closing. Such reimbursement will be effected by a deemed increase in Net Working Capital in the amount of such payments. Purchaser shall be entitled to any tax deductions or other tax benefits attributable to any severance or other similar compensation or benefit payments for which Purchaser is responsible pursuant to this Section 6.3.

(c) *Welfare Arrangements.* Subject to obligations under applicable law and the terms of any collective bargaining agreements or other Contracts with any labor union or other labor organization covering Transferring Employee, Purchaser agrees that, for a period of one year from and after the Closing, it shall, or shall cause its Affiliates to, provide the Transferring Employees with employee welfare and retirement plans and programs which provide benefits that are substantially similar to those provided to similarly situated employees of Purchaser or such Affiliates. From and after the Closing Date, Purchaser shall become responsible for any and all liabilities with respect to the Transferring Employees that are incurred by such individuals on or prior to the Closing Date under the applicable Employee Plans for health, life, accidental death and dismemberment, supplemental employment compensation, dental, fringe benefits, expense reimbursement, accident, sickness and disability benefits; *provided that* with the consent of any applicable labor union representing Union Employees, Union Employees may be permitted to carry forward such accrued vacation or sick pay, to be paid by Purchaser, the amount of such accrued items as of the Closing to be included as a payable in the calculation of Closing Net Working Capital pursuant to Section 1.5 hereof. For purposes of this Agreement, (i) a claim for health benefits (including, without limitation, claims for medical, prescription drug, dental, and vision care expenses) will be deemed to have been incurred on the date on which the related medical service was rendered to the claimant; (ii) a claim for sickness or disability benefits will be deemed to have been incurred on the date such sickness or disability occurs, except that no claim shall be deemed to have occurred prior to the Closing Date unless such claim is filed within five (5) Business Days prior to the Determination Period; and (iii) in the case of any claim for benefits other than health benefits (e.g., life insurance benefits), a claim will be deemed to have been incurred upon the occurrence of the event giving rise to such claims. Purchaser shall be responsible for all claims that are incurred by Transferring Employees on or after the Closing Date under the applicable benefit plans, policies or arrangements providing health, life, accidental death and dismemberment, supplemental employment compensation, dental, fringe benefits, expense reimbursement, accident, sickness and disability benefits and which are maintained by Purchaser.

(d) *Service Credit.* Following the Closing, Purchaser shall cause all employee benefit plans of Purchaser or its Affiliates to provide that a Transferring Employee's period of employment with Sellers or their Affiliates or any predecessor thereof (as applicable) shall be treated as service for Purchaser, or its Affiliates, as applicable, for purposes of eligibility and vesting. Any and all pre-existing condition limitations and eligibility waiting periods under any group health plan shall be waived with respect to the Transferring Employees and their eligible dependents, and Transferring Employees shall be given credit for amounts paid under any Welfare Plan during the same period for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the employee welfare plans maintained by Purchaser or its Affiliates.

(e) *Honor Agreements.* Purchaser agrees to assume, honor, maintain and perform, and to cause its affiliates to assume, honor, maintain and perform in accordance with their respective terms, without deductions, counterclaims, interruptions or deferments (other than withholding under applicable law), the individual employment and severance agreements and arrangements, as amended through the date hereof or as contemplated hereby, that are in effect now or as of Closing with respect to a Transferring Employee. Purchaser shall, or shall cause its Affiliates to, honor and discharge all obligations under any collective bargaining agreement or other Contract with any labor union or other labor organization covering Transferring Employees or former employees of the Sellers in effect as of the date hereof until their expiration; *provided, however,* that this undertaking is not intended to prevent Purchaser or its Affiliates from lawfully and properly exercising their rights with respect to such collective bargaining agreements in accordance with their terms.

(f) *Indemnification.* Purchaser agrees to bear, and indemnify and hold Sellers harmless from and against, all direct and indirect costs, expenses and liabilities arising from or relating to claims made by or on behalf of the Transferring Employees in respect of all notices, payments, fines or assessments due to any government authority pursuant to any applicable foreign, federal, state or local law, common law, statute, rule or regulation with respect to the employment, discharge or layoff of Transferring Employees, including, but not limited to the Worker Adjustment and Retraining Notification Act, and any rules or regulations as have been issued in connection with any of the foregoing, and for any liability or benefit continuation obligation under Section 4980B of the Code and Sections 601-609 of ERISA.

Section 6.4 *Multiemployer Plans.* With respect to each Multiemployer Plan (as defined below), after the Closing:

(a) Purchaser will be obligated to make contributions to the Multiemployer Plans (as defined below) in accordance with all collective bargaining agreements relating thereto and shall contribute to each such Multiemployer Plan with respect to such operations for substantially the same number of contribution base units for which SDIC has an obligation to contribute to such Multiemployer Plan.

(b) For purposes of this Agreement, the "*Multiemployer Plans*" shall mean, collectively: (i) the Teamsters Security Fund for Southern Nevada; (ii) the Western Conference of Teamsters Pension Trust Fund; (iii) the Hotel Employees and Restaurant Employees International Union Welfare Fund; (iv) the Southern Nevada Culinary Workers and Bartenders Pension Plan Trust Agreement; (v) the Operating Engineers Local 501 Security Fund; (vi) the Central Pension Fund of the International Union of Operating Engineers and Participating Employers; (vii) the Hotel Employees and Restaurant Employees International Union Welfare Fund; (viii) the American Federation of Musicians' and Employers' Pension Fund; (ix) the Electrical Workers Health and Welfare Trust Fund; (x) the National Employees Benefit Board; (xi) the Nevada Resort Association-I.A.T.S.E. Local 720 Apprentice and Journeyman Training and Education Trust; (xii) the Nevada Resort Association-I.A.T.S.E. Local 720 Disability Trust; (xiii) the Carpenters Health and Welfare Trust Fund; (xiv) the Construction Industry and Carpenters Joint Pension Trust Fund; (xv) the Painters' Trust (welfare fund); and (xvi) the I.B.P.A.T. Union and Industry National Pension Fund.

(c) Unless and until a variance or exemption is obtained in accordance with section 4204(c) of ERISA, Purchaser will provide to each Multiemployer Plan, for a period of five plan years commencing with the first plan year beginning after the Closing, a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA, or an amount held in escrow by a bank or similar financial institution satisfactory to the Multiemployer Plan, or

such other security as may be permitted under section 4204(a)(1)(B) of ERISA or regulations thereunder, in an amount equal to the greater of:

(i) the average annual contribution required to be made by SDIC to each Multiemployer Plan with respect to the operations thereunder for the three plan years preceding the plan year in which the Closing occurs, or

(ii) the annual contribution that SDIC was required to make with respect to the operations under each Multiemployer Plan for the last plan year before the plan year in which the Closing occurs, which bond or escrow shall be paid to any such Multiemployer Plan if Purchaser withdraws from such Multiemployer Plan, or fails to make a contribution to such Multiemployer Plan when due, at any time during the first five plan years beginning after the Closing.

(d) If Purchaser withdraws from any Multiemployer Plan in a complete' withdrawal or a partial withdrawal with respect to the Union Employees within the period referred to in the preceding subsection 6.4(c), SDIC agrees to be secondarily liable for any withdrawal liability SDIC would have had at the Closing Date to such Multiemployer Plan, but for the application of section 4204 of ERISA, if the withdrawal liability of Purchaser with respect to such Multiemployer Plan is not paid.

(e) Purchaser shall indemnify and hold SDIC harmless from, against and in respect of (and shall on demand reimburse SDIC for) the amount of any secondary liability incurred by SDIC under section 4204 of ERISA which is in excess of 50% of the potential withdrawal liability of SDIC determined as of the Closing, such determination to be made on a plan-by-plan basis; *provided, however,* that if withdrawal liability is triggered by reason of Purchaser's failure to comply with any provision of the preceding subsections 6.4(a) or (c) (it being understood that any withdrawal by Purchaser from any Multiemployer Plan shall not be deemed such a failure to comply), Purchaser's indemnification of SDIC shall be without limitation for any such secondary liability.

(f) In the event of a subsequent sale of Assets by Purchaser during the five-year period referenced in Section 6.4(c), Purchaser agrees to use its best efforts to comply with the provisions of section 4204(a)(1) of ERISA if such sale of Assets would trigger secondary liability on Purchaser.

(g) If SDIC is liquidated before the end of the first five plan years beginning after Closing, then, except as may otherwise be required by law, SDIC shall provide a bond, an amount in escrow or such other security as may be permitted under section 4204(a)(1)(B) of ERISA or regulations thereunder, equal to the present value of the withdrawal liability SDIC or its affiliates would have had but for the application of section 4204 of ERISA, which bond, amount in escrow or other security may be applied toward the satisfaction of SDK's secondary liability described in subsection 6.4(d) hereof.

(h) Purchaser agrees to provide SDIC with reasonable advance notice of any action or event which could result in the imposition of withdrawal liability contemplated by this Section 6.4 and in any event Purchaser shall immediately furnish SDIC with a copy of any notice of withdrawal liability it may receive with respect to any Multiemployer Plan, together with all the pertinent details. In the event that any such withdrawal liability shall be assessed against Purchaser, Purchaser further agrees to provide SDIC with reasonable advance notice of any intention on the part of Purchaser not to make full payment of any withdrawal liability when the same shall become due.

Section 6.5 Intentionally Omitted.

Section 6.6 *Closings Under Certain Circumstances.*

(a) *Failure to Obtain Gaming Permits.* The parties recognize that Purchaser may not obtain the Gaming Permits prior to the Outside Date. Accordingly, in such event, Purchaser shall deposit the balance of the Purchase Price with Escrowee and upon confirmation of receipt of funds and satisfaction of all other conditions to Closing, SDIC shall surrender its' Gaming Permit and close all operations in the casino.

(b) *Failure to Obtain Liquor Licenses.* If Purchaser has not obtained the necessary Liquor Licenses on or before the Outside Date, the liquor inventories comprising a portion of the Assets may at the election of Purchaser either be stored to the extent such storage is legal, and/or sold to a licensed third party (with a commensurate increase in the Purchase Price to be paid by such third party to reflect the net book value of such liquor inventories) in a manner permitted under applicable Nevada Law.

(c) *PUC Approval.* The parties hereto acknowledge that DIIC is a "Public Utility" in accordance with the provisions of NRS Sections 704.020 and 704.329 and sale and transfer of the DIIC Shares, which constitutes more than twenty-five percent of the outstanding shares of DIIC, requires prior authorization of the Nevada Public Utilities Commission ("*PUC*"). Accordingly, the transfer of the DIIC Shares shall be deferred pending PUC approval and Purchaser and SGC shall act diligently and in good faith to obtain approval for the transfer of such shares to Purchaser as soon as possible, whether on or after the Closing and to transfer the DIIC Shares to Purchaser promptly following such approval, and, if such approval is not obtained prior to the Closing, then from and after the Closing and unless and until such transfer shall occur, to make available to Purchaser to the maximum extent permitted by law the economic benefits of ownership of the DIIC Shares, and Purchaser, to the maximum extent permitted by law, shall assume and relieve SGC of the economic burdens of ownership of the DIIC Shares.

Section 6.7 *Post-Closing Cooperation.* After the Closing, upon reasonable written notice, Purchaser and Sellers shall furnish or cause to be furnished to the other party and its employees, counsel, auditors and representatives access, during normal business hours, such information and assistance relating to the Business as is reasonably necessary for financial reporting and accounting matters, the preparation and filing of any Tax Returns, reports or forms or the defense of any Tax audit, claim or assessment. Each party shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the other pursuant to this Section 6.7. Neither party shall be required by this Section 6.7 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations. Sellers shall use commercially reasonable efforts to cooperate with Purchaser in connection with any filings required to be made by Purchaser with Governmental Authorities after the Closing.

Section 6.8 *Form of Instruments, Etc. to be Reasonably Satisfactory.* The parties agree that the form and substance of all actions, proceedings, instruments and documents required to consummate the transactions contemplated by this Agreement shall be subject to the reasonable approval of each party and their respective counsel.

Section 6.9 *Additional Agreements of Sellers.* Sellers agree that it will be solely responsible for the payment of any fees or taxes due pursuant to any subsequent deficiency determinations made under the Nevada Gaming Control Act (chapter 463 of the NRS) which encompasses any period of time before the Closing Date. The foregoing provision, required by the Nevada Gaming Control Act to be included in this Agreement, shall not be construed to exonerate Purchaser from paying, or to require Sellers to pay, for fees or taxes attributable to operations of the Business from and after the Closing Date.

Section 6.10 *Title Policies.* At the Closing, Purchaser shall obtain an ALTA owner's policy of title insurance, issued by Title Insurer, insuring that Purchaser has fee title to the Real Property Assets that DIIC has fee title to the real property described as Parcels 46 and 47 in Title Report A ("*DIIC Land*"), that Starwood Timeshare has fee title to real property described as Parcels 16 through 44 ("*Starwood Timeshare Lots*") and DI Timeshare has fee title to the real property described in Title Report B ("*DI Timeshare Lots*") subject only to (i) the Permitted Liens, (ii) liens for taxes not yet due and payable, (iii) all standard exceptions, exclusions, conditions and stipulations from coverage for the Title Insurer's ALTA Owner's Policy of Title Insurance, including any and all endorsements customary in real estate sale transactions involving the magnitude and type of the Real Property Assets and (iv) those exceptions arising after the date hereof and approved by Purchaser as provided above (the "Title Policies"). The coverage amount of the Title Policies for the Real Property Assets and the real property held by the Companies shall be no more than the portion of the Purchase Price reasonably allocable thereto.

ARTICLE 7
CONDITIONS TO OBLIGATIONS

Section 7.1 *Conditions to Obligations of Purchaser and Sellers.* The obligations of Purchaser and Sellers to consummate, or cause to be consummated, the transactions contemplated hereby are subject to the satisfaction of the following conditions, any one or more of which may be waived (unless expressly noted to the contrary herein) in writing by such parties:

(a) All waiting periods under the HSR Act applicable to transactions contemplated hereby shall have expired or been terminated; provided, however, that the same shall not be a condition for the benefit of Purchaser to the extent of any contributing delay by Purchaser in performing its obligations hereunder.

(b) There shall not be (i) in force any order or decree, statute, rule or regulation restraining, enjoining or prohibiting the consummation of the transactions contemplated hereby, or (ii) any material suit or proceeding by a Governmental Authority to restrain or enjoin the consummation of the transactions contemplated hereby or to nullify or render ineffective this Agreement if consummated; *provided, however,* that the parties shall use their commercially reasonable efforts to prevent any such event described in clauses (i) and (ii) (including appealing any adverse decision); and provided, further, that no injunction based on Purchaser's alleged unsuitability as a landlord or as the holder of a gaming license shall excuse Purchaser's performance hereunder. The parties acknowledge that the entire risk of obtaining the Licenses and any findings as to landlord suitability rests with Purchaser.

(c) The Outside Date shall not have passed, except that the same shall not be a condition for the benefit of Purchaser to the extent of any contributory delay by Purchaser in performing its obligations hereunder.

Section 7.2 *Conditions to Obligations of Purchaser.* The obligations of Purchaser to consummate, or cause to be consummated, the transactions contemplated by this Agreement are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Purchaser:

(a) Each of the representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects both on the date hereof and as of the Closing, as if made anew at and as of that time (except that representations and warranties that are made as of a specific date need be true and correct in all material respects only as of such date), except in each case for changes after the date hereof which are expressly contemplated or permitted by this Agreement, and each of the covenants and agreements of Sellers to be performed as of or prior to the Closing shall have been duly performed in all material respects.

(b) Sellers shall have delivered to Purchaser a certificate signed by an officer of each Seller and of each of the Companies dated the Closing Date, certifying that the conditions specified in Section 7.1, as they relate to each Seller and each of the Companies and subsection 7.2(a) have been fulfilled.

(c) Sellers shall have delivered to Escrowee (i) grant, bargain and sale deeds conveying fee simple title to the Real Property Assets, and (ii) such other instruments required to be delivered by Sellers pursuant to Section 2.2(b)(ii) hereof.

(d) Purchaser shall have received the Title Policies or commitments therefor.

Section 7.3 *Conditions to the Obligations of Sellers.* The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following additional conditions, any one or more of which may be waived in writing by Sellers:

(a) Each of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects both on the date hereof and as of the Closing, as if made anew at and as of that time (except that representations and warranties that are made as of a specific date need be true and correct in all material respects only as of such date), except in each case for changes after the date hereof which are expressly contemplated or permitted by this Agreement, and each of the covenants and agreements of Purchaser to be performed as of or prior to the Closing shall have been duly performed in all material respects.

(b) Purchaser shall have delivered to Escrowee al(documents and instruments required to be delivered by Purchase pursuant to Section 2.2(b)(iv) hereof.

(c) Purchaser shall have delivered to Sellers a certificate signed by the Member of Purchaser, dated the Closing Date, certifying that the conditions specified in Section 7.1, as they relate to Purchaser, and subsection 7.3(a) have been fulfilled.

ARTICLE 8
TERMINATION

Section 8.1 *Termination.* This Agreement may be terminated and the transactions contemplated hereby abandoned:

(a) by mutual written agreement of Sellers and Purchaser;

(b) by Sellers if Purchaser shall fail timely to make the Deposit or any portion thereof;

(c) by Sellers if the Closing shall not have been consummated on or before the Outside Date other than by reason of Sellers' default;

(d) by Sellers if any of the conditions set forth in Section 7.1 or 7.3 shall have become incapable of fulfillment as of the Outside Date and shall not have been waived by Sellers;

(e) by Purchaser if any of the conditions set forth in Section 7.1 (but only to the extent such conditions may be a condition for the benefit of Purchaser) or 7.2 shall have become incapable of fulfillment as of the Outside Date and shall not have been waived by Purchaser.

Section 8.2 *Effect of Termination.* In the event of termination of this Agreement pursuant to Section 8.1, except as set forth in this Section 8.2 and in Section 8.3 below, this Agreement shall forthwith become void and have no effect, without any liability on the part of any party hereto or their respective Affiliates, officers, directors or stockholders; provided, however, that nothing in this Section 8.2 shall relieve or limit the liability or obligations hereunder of any party (the "*Defaulting Party*") to the other party or parties on account of a material breach of a covenant or agreement contained herein, or any fraudulent representation or warranty contained herein by the Defaulting

Party prior and further, upon any termination of this Agreement. The provisions of Sections 8.2, 8.3, 9.2, 9.3, 12.5, 12.6 and 12.12 hereof shall survive any termination of this Agreement.

Section 8.3 *Liquidated Damages.*

(a) BECAUSE OF THE MAGNITUDE AND UNIQUE NATURE OF THE PROPERTY RIGHTS TO BE CONVEYED, THE PARTIES ACKNOWLEDGE THAT SELLERS' DAMAGES IN THE EVENT OF PURCHASER'S FAILURE TO CONSUMMATE THE CLOSING IN ACCORDANCE WITH PURCHASER'S OBLIGATIONS HEREUNDER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICAL OF ASCERTAINMENT. THE PARTIES HAVE EXPRESSLY NEGOTIATED THIS PROVISION, AND HAVE AGREED THAT IN LIGHT OF THE CIRCUMSTANCES EXISTING AT THE TIME OF EXECUTION OF THIS AGREEMENT, AN AMOUNT EQUAL TO THE DEPOSIT TOGETHER WITH ACCRUED INTEREST OR DIVIDENDS THEREON PRIOR TO RELEASE THEREOF TO SELLERS IN ACCORDANCE WITH THIS AGREEMENT, REPRESENTS A REASONABLE ESTIMATE OF THE HARM LIKELY TO BE SUFFERED BY SELLERS IN THE EVENT THAT PURCHASER SHALL, FOR ANY REASON OTHER THAN SELLERS' DEFAULT OR FAILURE OF ANY OF THE CLOSING CONDITIONS WHICH MAY BE A CONDITION FOR THE BENEFIT OF PURCHASER, FAIL TO CONSUMMATE THE CLOSING, SELLERS' ACTUAL DAMAGES MIGHT WELL EXCEED THE AMOUNT OF THE DEPOSIT AND ALL INTEREST THEREON, BUT THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR IMPRACTICAL. ACCORDINGLY, IN THE EVENT THAT PURCHASER SHALL FAIL TO TIMELY CONSUMMATE THE CLOSING FOR ANY REASON OTHER THAN SELLERS' BREACH OR THE FAILURE OF A CLOSING CONDITION TO WHICH BENEFIT PURCHASER IS ENTITLED, TIME BEING OF THE STRICTEST ESSENCE OF EACH AND EVERY PROVISION HEREOF, THEN SELLERS SHALL BE ENTITLED TO RETAIN AS LIQUIDATED DAMAGES THE DEPOSIT, INCLUDING ALL INTEREST ACCRUED THEREON, AS SELLERS' SOLE AND EXCLUSIVE REMEDY FOR SUCH FAILURE BY PURCHASER.

FURTHER, NOTHING IN THIS SECTION SHALL LIMIT OR MODIFY PARENT OR SELLERS' RIGHTS TO BE INDEMNIFIED, DEFENDED AND HELD HARMLESS BY PURCHASER PURSUANT TO THE OTHER PROVISIONS OF THIS AGREEMENT. THE PROVISION OF THIS SECTION 8.3 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

PURCHASER'S INITIALS /s/ SELLERS' INITIALS _____

(b) IN THE EVENT SELLERS SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES, PURCHASER SHALL REFRAIN FROM OBSTRUCTING OR INTERFERING IN ANY WAY WITH SELLERS' EXERCISE OF SUCH REMEDIES AND SHALL EXECUTE A RELEASE IN FORM REASONABLY SATISFACTORY TO SELLERS' COUNSEL OF ANY AND ALL CLAIMS AGAINST SELLERS, THE BUSINESS AND THE ASSETS WITHIN THREE (3) BUSINESS DAYS OF SELLERS' DEMAND THEREFOR. IN THE EVENT PURCHASER SHALL THEREAFTER FAIL OR REFUSE SO TO COOPERATE WITH SELLERS IN THE TERMINATION OF THIS AGREEMENT, THE CANCELLATION OF ESCROW, THE PAYMENT OF LIQUIDATED DAMAGES AND THE EXECUTION AND DELIVERY OF THE FOREGOING DESCRIBED RELEASE, THEN SELLERS MAY ELECT TO PURSUE ANY AND ALL REMEDIES AVAILABLE TO THEM AT LAW OR IN EQUITY INCLUDING WITHOUT LIMITATION, ACTUAL DAMAGES. IN THE EVENT OF AN ACTION COMMENCED BY SELLERS OR PURCHASER OVER DISPOSITION OF THE DEPOSIT OR MONEY DAMAGES ASSERTED BY SELLERS FOR PURCHASER'S ALLEGED BREACH OR BY PURCHASER FOR SELLERS' ALLEGED BREACH OF THIS

AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER, IN ADDITION TO ITS COSTS OF ENFORCEMENT, INCLUDING ATTORNEYS' AND CONSULTANTS' FEES, INTEREST AT TEN (10%) PERCENT PER ANNUM ON THE SUM ULTIMATELY

RECOVERED, CALCULATED FROM THE EXPIRATION OF SAID THREE (3) BUSINESS DAYS FROM AND AFTER SAID DATE.

(c) IN THE EVENT THAT PURCHASER SHALL HAVE FULLY AND TIMELY PERFORMED ALL OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE TIMELY MAKING OF THE DEPOSIT PURSUANT TO SECTION 1.3 HEREOF, THERE SHALL BE NO CONDITIONS TO SELLERS' OBLIGATIONS THAT REMAIN UNSATISFIED, AND PURCHASER IS UNCONDITIONALLY PREPARED TO CLOSE, THEN IN SUCH EVENT, IF SELLERS SHALL FAIL OR REFUSE TO CLOSE, PURCHASER SHALL BE ENTITLED TO SEEK SPECIFIC PERFORMANCE TOGETHER WITH OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY.

ARTICLE 9
INDEMNIFICATION

Section 9.1 *Survival of Representations and Warranties.* Subject to the limitations and other provisions of this Agreement, the representations and warranties set forth in Section 3.1 and Section 3.2 shall survive the Closing for a period of one year and all other representations and warranties shall expire as of Closing.

Section 9.2 *Indemnification by Purchaser.*

(a) Purchaser agrees, subject to the other terms and conditions of this Agreement, to indemnify Parent, Sellers, Affiliates of Sellers and their respective officers, directors, agents or employees, and their respective successors and assigns (each a "*Seller Indemnified Party*") against and hold each Seller Indemnified Party harmless from all Losses (without duplication) to such Seller Indemnified Party arising out of (i) the breach of any representation or warranty of Purchaser herein, (ii) the breach of any covenant or agreement of Purchaser herein or (iii) following the Closing, the Gramanz Contract and the Assumed Liabilities. Anything in Section 9.1 to the contrary notwithstanding, no claim may be asserted nor may any action be commenced against Purchaser for breach of any representation or warranty contained herein, unless written notice of such claim or action is received by Purchaser describing in reasonable detail the facts and circumstances with respect to the subject matter of such claim or action on or prior to the date on which the representation or warranty on which such claim or action is based ceases to survive as set forth in Section 9.1, whether or not the subject matter of such claim or action shall have occurred before or after such date.

(b) Sellers agree to give, and cause each Seller Indemnified Party to give, Purchaser written notice of any claim, assertion, event or proceeding by or in respect of a third party as to which it may request indemnification hereunder as soon as is practicable and in any event within 30 days of the time that such Seller Indemnified Party learns of such claim, assertion, event or proceeding; *provided, however,* that the failure to so notify Purchaser shall not affect rights to indemnification hereunder except to the extent that Purchaser is actually prejudiced by such failure. Within 30 days after receipt of such notification, Purchaser may elect to direct, through counsel of its own choosing reasonably acceptable to the Seller Indemnified Party, the defense or settlement of any such claim or proceeding at its own expense; provided, that no settlement will be made without the consent of the Seller Indemnified Party (not to be unreasonably withheld or delayed). If Purchaser elects to assume the defense of any such claim or proceeding, the Seller Indemnified Party may participate in such defense, but in such case the expenses of the Seller Indemnified Party shall be

paid by such Seller Indemnified Party. Sellers shall provide, or cause such Seller Indemnified Party to provide, Purchaser with access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise reasonably cooperate with Purchaser in the defense or settlement thereof, and Purchaser shall reimburse Sellers or the Seller Indemnified Party for all its reasonable out-of-pocket expenses in connection therewith. If Purchaser elects to direct the defense of any such claim or proceeding, the Seller Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability, unless Purchaser consents (which consent is not to be unreasonably withheld) in writing to such payment or unless: Purchaser, subject to the last sentence of this Section 9.2(b), withdraws from the defense of such asserted liability, or unless a final judgment from which no appeal may be taken by or on behalf of Purchaser is entered against the Seller Indemnified Party for such liability. If Purchaser shall not be entitled to direct the defense, or fails to defend, or if, after commencing or undertaking any such defense, Purchaser fails to prosecute or withdraws from such defense, the Seller Indemnified Party shall have the right to undertake the defense or settlement thereof, at Purchaser's expense. If the Seller Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section 9.2(b) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego appeal with respect thereto, then Sellers shall give, or cause such Seller Indemnified Party to give, Purchaser prompt written notice thereof and Purchaser shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding.

(c) In addition to Purchaser's obligations set forth elsewhere in this Section 9.2, and notwithstanding the procedural requirements of Section 9.2(b) above, the following provisions of this Section 9.2(c) will obtain and control with respect to that certain litigation pending in Special Board Number Five Bis of the Local Conciliation and Arbitration Board of the Federal District, Mexico ("Special Board"), captioned *Elias Antonio Haddad Tamé ("Tamé") vs. Rimtech Corporation and Sheraton Desert Inn Corporation et. al* and/or any other proceeding brought or involving Tame and concerning his work for or severance by Rimtech Marketing Incorporated, AKA Rimtech Corporation ("Rimtech") (the "Severance Litigation"). Sellers have made available to Purchaser litigation files maintained by Seller's in-house counsel, Marc Rubinstein, at SDIC, and letters written by advisory counsel addressed to Marc Rubinstein dated January 26, 1999 (the "January 26 Letter") and April 25, 2000 (the "April 25 Letter"), concerning the Severance Litigation. Purchaser hereby agrees to fully indemnify and hold harmless Seller Indemnified Party, wherever located, including, without limitation, ITT Sheraton Corporation, Sheraton International, Inc. and Sheraton International de Mexico, Inc., each of which Sellers represents is an Affiliate of a Seller or any of the hotels in Mexico in which Sheraton has an interest and Rimtech, from and against any and all Losses arising out of or in connection with the Severance Litigation. Without limitation of the foregoing, on the Closing, Purchaser will undertake, at its sole cost and expense, the defense, appeal, settlement and payment of any Losses on account of the Severance Litigation, including, without limitation, that certain resolution pronounced by the Special Board against SDIC and Rimtech, which is the subject of the January 26 Letter and the April 25 Letter. Further, without limitation of the foregoing, in the event any attachment or other writ or order shall be issued against any Seller Indemnified Party and/or any properties in Mexico, the United States or elsewhere in the world, owned by a Seller Indemnified Party or in which a Seller Indemnified Party has an interest, Purchaser will be responsible for satisfying, bonding against, and/or obtaining release of such party or properties from such writ or order. In the event Purchaser fails so to do within 20 days from and after notice from Sellers or their representatives of any such writ or order and in any event prior to execution, levy or other enforcement of such writ or order, Sellers shall have the right, but not the obligation, to pay or otherwise satisfy any such writ or order required to obtain the full release of any such property from such writ or order, and Purchaser agrees and acknowledges that it shall be obligated to reimburse Sellers for the same, together with legal fees

and expenses incurred in connection therewith, plus interest on all such sums, at the rate of 10% per annum. Purchaser shall have the right to assert any and all defenses available to Seller Indemnified Parties and to continue to contest the Severance Litigation. Sellers shall cooperate; in such defense and contest so long as no Seller Indemnified Party is required to incur monetary expense and so long as no asset of any Seller Indemnified Party shall be attached.

Section 9.3 *Indemnification by Sellers.*

(a) Sellers agree, jointly and severally, subject to the other terms and conditions of this Agreement, to indemnify Purchaser, Affiliates of Purchaser, and each of their respective officers, directors, agents or employees, and their respective successors and assigns (each a "*Purchaser Indemnified Party*") against and hold each Purchaser Indemnified Party harmless from all Losses (without duplication) to such Purchaser Indemnified Party arising out of (i) the breach of any representation or warranty of Sellers herein, (ii) the breach of any covenant or agreement of Sellers herein or (iii) the Retained Liabilities. Anything in Section 9.1 to the contrary notwithstanding, no claim may be asserted nor any action commenced against Sellers for breach of any representation or warranty contained herein, unless written notice of such claim or action is received by Sellers describing in detail the facts and circumstances with respect to the subject matter of such claim or action on or prior to the date on which the representation or warranty on which such claim or action is based ceases to survive as set forth in Section 9.1, whether or not the subject matter of such claim or action shall have occurred before or after such date.

(b) (i) The indemnification obligations of Sellers pursuant to this Agreement, including without limitation, pursuant to Section 9 3(a)(i), shall not be effective until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 9.3(a)(i) exceeds One Million Five Hundred Thousand Dollars ($1,500,000) Dollars (the "*Seller's Threshold Amount*"), at which point such obligations shall be effective only as to the amount of such Losses in excess of the Seller's Threshold Amount, subject to the limitation in Section 9.3(b)(ii); and (ii) the indemnification obligations of Sellers pursuant to this Agreement, including without limitation, pursuant to Section 9.3(a)(i) shall be effective only until the dollar amount paid in respect of the Losses indemnified against under this Agreement, including without limitation, under Section 93(a)(i) aggregates to an amount equal to Twenty Million Dollars ($20,000,000).

(c) Purchaser agrees to give, and to cause each Purchaser Indemnified Party to give, Parent written notice of any claim, assertion, event or proceeding by or in respect of a third party as to which it may request indemnification hereunder or as to which Seller's Threshold Amount may be applied as soon as is practicable and in any event within 30 days of the time that such Purchaser Indemnified Party learns of such claim, assertion, event or proceeding; *provided, however,* that the failure to so notify Sellers shall not affect rights to indemnification hereunder except to the extent that Sellers are actually prejudiced by such failure. Within 30 days after receipt of such notification, Sellers may elect to direct, through counsel of its own choosing reasonably acceptable to the Purchaser Indemnified Party, the defense or settlement of any such claim or proceeding at their own expense; *provided,* that no settlement will be made without the consent of the Purchaser Indemnified Party (not to be unreasonably withheld or delayed). If Sellers elect to assume the defense of any such claim or proceeding, the Purchaser Indemnified Party may participate in such defense, but in such case the expenses of the Purchaser Indemnified Party shall be paid by such Purchaser Indemnified Party. Purchaser shall provide, or cause the Purchaser Indemnified Party to provide, Sellers with access to its records and, personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise reasonably cooperate with Sellers in the defense or settlement thereof, and Sellers shall reimburse Purchaser or the Purchaser Indemnified Party for all its reasonable out-of-pocket expenses in connection therewith. If Sellers elect to direct the defense of any such claim or proceeding, the Purchaser Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability

unless Sellers consent (which consents are not to be unreasonably withheld) in writing to such payment or unless Sellers, subject to the last sentence of this Section 9.3(c), withdraws from the defense of such asserted liability or unless a final judgment from which no appeal may be taken by or on behalf of Sellers are entered against the Purchaser Indemnified Party for such liability. If Sellers shall not be entitled to direct the defense, or fails to defend, or, if after commencing or undertaking any such defense, Sellers fail to prosecute or withdraw from such defense, the Purchaser Indemnified Party shall have the right to undertake the defense or settlement thereof, at the expense of Sellers. If the Purchaser Indemnified Party assumes the defense of any such claim or proceeding pursuant to this Section 9.3(c) and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Purchaser Indemnified Party shall give Sellers prompt written notice thereof and Sellers shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding.

Section 9.4 *Losses Net of Insurance and Tax Benefits.*

(a) The amount of any and all Losses indemnified under this Agreement shall be determined net of any amounts recovered by or to which the indemnified party is entitled under insurance policies, indemnities or other reimbursement arrangements with respect to such Losses. The amount of any and all Losses indemnified under this Agreement shall be computed to take into account and to deduct therefrom (i) any prior or subsequent recovery in respect of part or all of a claim by a Seller Indemnified Party or a Purchaser Indemnified Party, as the case may be, whether by payment, discount, credit, offset or otherwise and (ii) the amount of any provision reflected as a current liability in the Closing Balance Sheet in respect of matters giving rise to such Losses.

Section 9.5 *Exclusive Remedy.* Except for any claim (a) grounded in fraud or (b) seeking equitable relief or remedial action, the parties hereto acknowledge and agree that, from and after the Closing Date, the indemnification provisions of this Article 9 shall be the exclusive remedy of Purchaser, on the one hand, and Sellers, on the other hand, with respect to the transactions contemplated by this Agreement. With respect to actions grounded in fraud or seeking equitable relief or remedial action, (y) the right of a party to be indemnified and held harmless pursuant to the indemnification provisions of this Article 9 shall be in addition to and cumulative of any rights of such party at law or in equity and (z) no such party shall, by exercising the remedy available to it under this Article 9, be deemed to have elected such remedy exclusively or to have waived any other remedy, whether at law or in equity, available to it. No Purchaser Indemnified Party or Seller Indemnified Party shall be entitled to seek damages pursuant to this Article 9 other than actual damages, and in no event shall any party be entitled to seek or receive punitive or consequential damages.

Section 9.6 *Limitation on Liability Following Notice of Breach.* Notwithstanding anything to the contrary in this Agreement, following the Closing, (a) no Seller shall be liable to any Purchaser Indemnified Party in respect of any breach of a representation or warranty by Sellers if (i) such breach is disclosed to Purchaser prior to Closing pursuant to Section 4.4, (ii) such breach would constitute a failure of a condition of Purchaser's obligation to close, and (iii) notwithstanding such notification, the Closing shall have occurred and (b) Purchaser shall not be liable to any Sellers Indemnified Party in respect of any breach of a representation or warranty by Purchaser if (i) such breach is disclosed to Parent prior to Closing pursuant to Section 5.4, (ii) such breach would constitute a failure of a condition to Sellers' obligation to close and (iii) notwithstanding such notification the Closing shall have occurred.

ARTICLE 10
TAX ALLOCATION AND INDEMNIFICATION

Section 10.1 Intentionally Omitted.

Section 10.2 *Transfer Taxes*. The parties agree that all sales and transfer taxes and fees incurred in connection with this Agreement and the transactions contemplated hereby will be borne equally by Purchaser, on the one hand, and by Sellers, on the other hand.

Section 10.3 *Cooperation.* Sellers, on the one hand, and Purchaser, on the other hand, agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books and records for periods before, during and after a Straddle Period) relating to the Business and shall make available such knowledgeable employees of Parent, Purchaser or their respective Affiliates as any party may reasonably request for the preparation of any return for Taxes, claim for refund or audit, the prosecution or defense of any claim, suit or proceeding relating to any proposed adjustment, or the calculations of any taxes pertaining to a Straddle Period. For a period of seven years from and after Closing, Purchaser shall maintain and make available to Sellers and their representatives, on Parent's reasonable request, and Parent and shall maintain and make available to Purchaser, on Purchaser's reasonable request, copies of any and all information, books and records referred to in this Section 10.3. After such seven-year period, Purchaser and Sellers may dispose of such information, books and records provided that prior to such disposition, Purchaser shall give Parent the opportunity to take possession of, and Parent shall give Purchaser the opportunity to take possession of, such information, books and records.

Section 10.4 *Survival.* This Article 10 shall survive the Closing indefinitely.

ARTICLE 11
CERTAIN DEFINITIONS

Section 11.1 *Definitions.* As used herein, the following terms shall have the following meanings:

"Action" means any action, suit, claim, arbitration or other proceeding, including gaming audits, arbitrations, grievances, judicial proceedings, administrative proceedings and tax consents by or before any Governmental Authority.

"Affiliate" means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, through one or more intermediaries or otherwise.

"Agreement" has the meaning specified in the Preamble.

"Antitrust Authority" means the Antitrust Division of the United States Department of Justice, the United States Federal Trade Commission or the antitrust or competition law authorities of any other jurisdiction (whether United States, foreign or multinational).

"Applicable Rate" shall mean a 7% per annum interest rate.

"Assets shall mean collectively:

(a) the Real Property Assets; provided, however, at any time prior to May 25, 2000, Purchaser may instruct Sellers to cause the Rimtech Lease to be terminated as of Closing, in which event such Lease shall not be assigned to Purchaser;

(b) any air rights owned by SDIC and appurtenant or contiguous to the Real Property Assets; provided, however, notwithstanding anything to contrary in this Agreement, such rights shall only be conveyed by quitclaim deed and without representation or warranty of any kind;

(c) the DIIC Shares and the Corporate Books of DIIC;

(d) the Starwood Timeshare Interests and the Corporate Books of Starwood Timeshare;

(e) the DI Timeshare Interests and the Corporate Books of DI Timeshare;

(f) all of SDIC's right, title and interest in and to any development rights appurtenant to the Real Property Assets;

(g) all of SDIC's right, title and interest in and to any water rights owned by SDIC or appurtenant to the Real Property Assets without, however, representation or warranty of any kind except as set forth in Section 3.1(f);

(h) all right, title and interest of SDIC in and to any Gaming Assets;

(i) all right, title and interest of SDIC, in and to all other machinery, equipment other than Gaming Equipment, furniture, office equipment, telephone equipment, restaurant equipment, vehicles, storage tanks, spare and replacement parts, fuel, cleaning and office supplies, inventories purchased in the ordinary course of business and other tangible property located on the Real Property Assets, including personal computers and computer hardware and related software non-proprietary to SDIC or its subsidiaries or affiliates, but excluding (i) any and all proprietary computer hardware or software of SDIC or its affiliates or subsidiaries (including Starwood's Reservation software and SDIC's "forecasting program" financial analysis software) (ii) any and all proprietary operating manuals and other information and materials belonging to SDIC's affiliates, and (iii) any copyrights relating to any such software, information and materials (collectively, and together with the Gaming Equipment, the "*Tangible Personal Property*");

(j) to the extent assignable, all Permits;

(k) all of SDIC's right, title and interest to any and all copyrights, trademarks, trade names, service marks, displays, symbols, color arrangements, designs and logos relating to and/or used in the ownership, use and/or operation of the Business and/or the Assets (excluding "Sheraton", "ITT Sheraton Luxury Collection," and "Starwood" and any derivative names or marks and all logos, designs and other intellectual property related thereto ("*Starwood Proprietary Marks*"), and related applications and registrations, if any, and all other intangible property and/or rights, and all goodwill associated therewith, directly or indirectly relating thereto and/or used in the ownership, use and/or operation of the Business and/or the Assets, (collectively, the "*Intangible Property*");

(l) all of SDIC's right, title and interest in and to all benefits arising after the Closing, if any, from contracts, agreements, leases (including all security deposits and prepaid rent), licenses, commitments, sale and purchase orders and other items included in the Assumed Contracts, including all contracts, leases, agreements, claims and rights (and benefits arising therefrom) with or against all persons whomsoever, relating to the Business or the assets described in this subsection, or any portion thereof, including, without limitation, all development agreements, supply agreements, service agreements and/or franchise agreements, if any, and all leases of personal property, regardless of whether SDIC is lessee or lessor thereunder, including, without limitation, matters of public record, to the extent in each case, such agreements or leases are transferable (collectively "*Contract Rights*");

(m) all plans, specifications, drawings, renderings, models and photographs relating to the improvements located on or proposed to be constructed on the Real Property Assets that are in the possession or control of and are owned by Sellers, and that are not proprietary to any third party, including those commissioned or prepared in connection with the recent renovation of the improvements on the Real Property Assets, and, to the extent transferable,

any and all warranties given to SDIC by suppliers and traders in connection with such renovations (collectively "*Plans and Warranties*");

(n) all books and records ("*Required Records*") required by the Nevada Gaming Authorities to be maintained at the Business Premises and copies (Seller may retain the originals) of such other books and records, if any, which relate exclusively to the operation of the Business after the Closing Date (including only such employee records as it is lawful to transfer);

(o) all advance reservations, bookings and room deposits applicable to any period following the Closing Date, and originals of casino credit files with respect to the casino operations, and any telephone numbers used exclusively in connection with the Business;

(p) all accounts receivable, including without limitation, Gaming Receivables, existing as of the Closing Date;

(q) all of Sellers' cash on hand and/or on deposit in banks or other financial institutions, trade deposits and rights arising therefrom, cash equivalents, coins and marketable securities, which arisen from or relate to the Assets and/or Sellers' operation of the Business; and

(r) all of SDIC's gaming chips and tokens (including all (i) slot machine tokens not currently in circulation and (ii) "reserve" chips, if any, not currently in circulation and (iii) chips and tokens of SDIC relating to the use and operation of the Business which are outstanding as of the Closing Date, as they are presented for payment; provided, however, the liabilities represented by the chips and tokens in circulation shall be excluded from the calculation of Closing Net Working Capital and shall be an Assumed Liability.

"Assumed Financing Obligations" means all obligations set forth on Schedule 11.1-a hereto and any other Financing Obligations incurred in the ordinary course of business by Sellers, and not in excess of $100,000 as to any single obligation's liability.

"Assumed Liabilities" shall mean all obligations and liabilities of whatever kind and nature or its Subsidiaries or Affiliates, primary or secondary, direct or indirect, absolute or contingent, known or unknown, of Sellers or their aforementioned affiliates arising out of or relating to the Business or the Assets, other than the Retained Liabilities, including, without limitation, the following:

(i) all obligations and liabilities included in the calculation of Closing Working Capital pursuant to Section 1.5, including any such liabilities for progressive prizes associated with keno, slot machines and coin operated gaming devices, table games including the Caribbean Stud progressive meter, and sportsbook and racebook gaming;

(ii) any and all liabilities for any fee due or that may become due with respect to Gaming Receivables, including any fee that may become due under NRS 463.370, 463.371 or 463.3857 with respect to Gaming Receivables;

(iii) all obligations and liabilities of SDIC or its subsidiaries or affiliates under the Contracts not performed or required to have been performed as of the Closing Date;

(iv) all liabilities to customers with respect to all unrefunded cash deposits paid by such customers to SDIC or its subsidiaries or affiliates prior to the Closing Date to the extent included as a liability in the calculation of Closing Working Capital;

(v) all bookings made prior to the Closing Date for any period on or after the Closing Date, including without limitation, any bookings by any person in redemption of any benefits accrued under any preferred guest program maintained by Parent or SDIC;

(vi) all obligations and liabilities relating to Taxes relating to the Business or the Assets with respect to any period ending after the Closing Date, but to the: extent attributable to periods prior to the Closing Date, only to the extent included as a liability in the calculation of Closing Working Capital pursuant to Section 1.5;

(vii) all liabilities associated with outstanding gaming chips and tokens as of the Closing Date; and

(viii) all other liabilities, (other than (a) the Retained Liabilities and (b) the Gramanz Contract, which is nonetheless the subject of Purchaser's undertaking pursuant to Section 9.2 hereof), including without limitation, Assumed Financing Obligations and employee benefit liabilities, severance obligations, and personal injury liabilities, incurred in the ordinary course of business.

"Auditor" means Ernst & Young or other certified public accounting firm selected by Parent and reasonably acceptable to Parent and Purchaser.

"Backup Material" has the meaning specified in Section 1.5(b).

"Base Price" has the meaning specified in Section 1.2(a).

"Business" means: (i) the business of operating gaming facilities, and related hotel, convention, retail and entertainment operations, conducted under the Desert Inn name, including all trademark rights and goodwill related to the Desert Inn name; (ii) the ownership and operation of the Gaming Facility, including all business operations ancillary thereto; and (iii) all other activities and operations of the Sellers (other than those of the Excluded Companies and the Excluded Assets).

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in Nevada.

"Business Premises" means and includes the Real Property Assets and all sales offices or real property owned, leased or occupied by the Sellers or Affiliates used in connection with the Business.

"Capital Expenditure Adjustment Amount" has the meaning specified in Section 1.2(a).

"Charter Documents" means as to any Person, such Person's (i) articles of incorporation or organization, certificate of incorporation, certificate of formation or equivalent organizational documents and (ii) bylaws, partnership agreement, operating agreement, limited liability company agreement or equivalent document.

"Closing" has the meaning specified in Section 2.2(b)(i).

"Closing Date" has the meaning specified in Section 2.2(b)(i).

"Closing Date Purchase Price" means (i) the Base Price, *plus* (ii) the Estimated Net Working Capital Amount (which may be a positive or negative number), plus (iii) the Estimated Capital Expenditure Adjustment Amount.

"Closing Net Working Capital" has the meaning specified in Section 1.5(b).

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

"Companies" means collectively Starwood Timeshare, DIIC, and DI Timeshare.

"Confidentiality Agreement" has the meaning specified in Section 12.8.

"Contracts" means any contracts, agreements, leases, subleases, licenses or other understandings or commitments, written or oral.

"Corner Land Map" means that certain Exhibit for Parcel Map Determination plotted May 24, 1999 by G.C. Wallace, Inc.

"Corporate Books" means all corporate and limited liability company charter, minute and stock record books and corporate seals.

"Defaulting Party" has the meaning specified in Section 8.2.

"Deficit Amount" has the meaning specified in Section 1.5(d).

"Determination Date" has the meaning specified in Section 1.5(c).

"DI Assets" means, collectively, all of the Assets other than the DIIC Shares, the Starwood Timeshare Interests and the DI Timeshare Interests.

"DIIC Land" is defined in Section 6.10.

"DIIC Shares" has the meaning specified in the Recitals.

"DI Timeshare Lots" has the meaning set forth in Section 6.10.

"Employee Plans" shall mean all Multiemployer Plans, Pension Plans and Welfare Plans.

"Environmental Laws" means any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, legally binding decrees, or other requirements of any Governmental Authority (including, without limitation, common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment, human health or safety or relating to exposure of any kind of Hazardous Materials, as have been, are now, or may at any time hereafter be, in effect (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Air Act, as amended and the Hazardous Materials Transportation Act).

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Escrowee" means Nevada Title Company, 3320 W. Sahara Avenue, Las Vegas, Nevada 89102, Attention: Mr. Frank Brader, Title Officer and Troy Lochhead, Escrow Officer.

"Estimated Capital Expenditure Adjustment Amount" has the meaning specified in Section 1.5(a).

"Estimated Closing Net Working Capital Amount" has the meaning specified in Section 1.5(a).

"Excluded Assets" shall mean:

(a) all proprietary computer hardware and software of Parent or any of its respective affiliates or subsidiaries, including Parent's Reservation software and any copyrights relating to any such software, and any Intangible Property involving the names "Sheraton," "ITT Sheraton Luxury Collection," and "Starwood" including any derivative names and related marks, designs or logos and all proprietary operating manuals and related know-how;

(b) all right, title and interest of SDIC or its subsidiaries or affiliates in and to all books and records, in whatever medium, including digitally or magnetically stored data, files relating to the Business and/or the Assets, including all financial statements, certified financial reports, gaming tax returns (including supporting schedules), originals of all credit reports and files, including casino files and all books and accounting records relating to the Business and or the Assets in the possession or control of SDIC or any of its subsidiaries or affiliates, save and except the Required Records;

(c) all corporate charter, minute and stock record books, corporate seals and tax returns and supporting schedules, customer lists and documents of Sellers or any of their respective affiliates or subsidiaries relating to the Business, and all refunds, claims, entitlements or liabilities for income taxes or other taxes of any type whatsoever which Sellers may hereafter receive or be responsible for by reason of its ownership of the Assets or operation of the Business prior to the Closing Date;

(d) except as otherwise specifically provided for in this Agreement, all insurance policies relating to the Business or the Assets and all rights and claims thereunder, including refund claims;

(e) all claims and litigation and causes of action, and any tax refunds relating to any of the Excluded Assets;

(f) any Assets sold or otherwise disposed of in the ordinary course of business during the period from the date hereof until the Closing Date;

(g) all rights of indemnification, claims and causes of action which relate to the conduct of the Business prior to the Closing Date, including, without limitation, those arising by operation of law or in equity or otherwise, but excluding warranty claims with respect to the Gaming Equipment or Tangible Personal Property above, or product liability against the suppliers or manufacturers thereof; and

(h) all issued and outstanding shares of common stock of either of the-' Excluded Companies.

"Excluded Companies" means Sheraton Corner Enterprises, a Nevada corporation and Rimtech Marketing Incorporated, a Nevada corporation.

"Financing Obligations" means (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, notes, debentures, letters of credit, or similar instruments, (iii) obligations under capitalized leases, (iv) obligations under conditional sale, title retention or similar agreements or arrangements creating an obligation with respect to the deferred purchase price of property (other than customary trade credit), capitalized leases (such as the existing slot machines leases which are accounted for as capitalized leases on the Reference Balance Sheet) (vi) interest rate and currency obligation swaps, hedges or similar arrangements and (vii) all obligations to guarantee any of the foregoing types of obligations on behalf of others.

"GAAP" has the meaning specified in Section 1.5(b).

"Gaming Assets" means the Gaming Equipment and all Gaming Receivables.

"Gaming Authorities" shall mean the Nevada Gaming Commission and the Nevada State Gaming Control Board.

"Gaming Equipment" means "associated equipment" as defined in NRS Section 463.0136, "gaming devices" as defined in NRS Section 463.0155, gaming tables, keno and sports book furniture and equipment and all other equipment and paraphernalia, including, computer equipment and computer software owned or licensed by SDIC or its subsidiaries or affiliates and used in the conduct of gaming on the Business Premises.

"Gaming Facility" means The Desert Inn Casino in Las Vegas, Nevada.

"Gaming Permits" has the meaning set forth in Section 5.3 hereof.

"Gaming Receivables" means any "Credit instrument", as such term is defined in Chapter 463 of NRS or any successor statute thereto.

"Governmental Authority" means any Federal, state, municipal or local government, governmental authority, Gaming Commission, regulatory or administrative agency, governmental commission, department, board, bureau, court, tribunal, arbitrator or arbitral body.

"Gramanz Contract" means that certain Agreement dated as of October 13, 1993 by and between Brent Gramanz and Sheraton Corner Enterprises, a Nevada corporation.

"Hazardous Materials" means any hazardous substance, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, ureaformaldehyde insulation, asbestos or asbestos-containing materials, pollutants, contaminants, radioactivity, and any other materials or substances which are defined as hazardous, toxic or a pollutant or contaminant or are otherwise regulated under any Environmental Law.

"HSR Act" means the Hart- Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Income Tax(es)" means any and all Taxes based upon or measured in whole or in part by gross or net income (regardless of whether denominated as an "income tax," "franchise tax" or otherwise and including any Tax imposed on alternative bases, one of which is net income), imposed by any Taxing Authority, together with any interest, penalties and other additions thereto.

"Income Tax Return(s)" means all Tax Returns relating to, or required to be filed in connection with, any payment or refund of any Income Tax.

"Increase Amount" has the meaning specified in Section 1.5(d).

"Indemnity Claim" has the meaning specified in Section 9.4(b).

"Intangible Property" has the meaning set forth in the definition of "Assets".

"Interests" has the meaning specified in the Recitals.

"Inventoried Baggage" has the meaning set forth in Section 2.2(d)(ii).

"Inventoried Safe Deposit Boxes" has the meaning set forth in Section 2.2(d)(iii).

"Inventoried Vehicles" has the meaning set forth in Section 2.2(d)(iv).

"IRS" means the United States Internal Revenue Service.

"Knowledge" means, as of any date of determination, (a) with respect to Sellers, the actual knowledge or awareness, as of such date, of Mark Lefever and Marc Rubinstein, and (b) with respect to Purchaser, the actual knowledge or awareness, as of such date, of Stephen A. Wynn. The words "know", "knowledge", "knowing" and "known" shall be construed accordingly.

"License" has the meaning set forth in Section 5.3.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, encumbrance, security interest or other lien of any kind.

"Losses" of a Person means any and all losses, liabilities, damages, diminutions in value, claims, awards, judgments, costs and expenses (including, without limitation, the costs of reasonable attorneys' fees) actually suffered or incurred by such Person.

"Material Adverse Effect" shall mean a material adverse effect on the, operations or financial condition of the Business taken as a whole, but shall exclude any effect to the extent resulting from (i) any condition or event which adversely affects the gaming industry generally or the gaming industry in Nevada, (ii) general economic conditions, (iii) the implementation of California Proposition No. 1A, or the proposal, passage or implementation of any similar law or initiative, (iv) the proposal or passage of any law or other initiative restricting or adversely affecting the

conduct of gaming operations generally or (v) fluctuations in the earnings of the Business during the period from March 31, 2000 to the Closing Date.

"Material Casualty" has the meaning set forth in Section 13.1.

"Material Damage" means unrepaired damage as a result of fire or other casualty to all or any portion of the Business Premises or the Assets such that the cost to replace or repair such damaged Business Premises and Assets exceeds $50,000,000.

"Material Portion" means all or any portion of the Business Premises that represents at least 25% of the assessed value for tax purposes of the Business Premises.

"Multiemployer Plan" shall mean any "multiemployer plan" as defined in Section 4001(a)(3) of ER1SA identified in Section 6.4.

"Net Working Capital" means current assets minus current liabilities, as defined in GAAP *excluding, however*, (i) any Excluded Assets or Retained Liabilities, (ii) any provisions for income Taxes or income Tax refunds, including any and all deferred taxes, (iii) any intercompany accounts and (iv) any accruals or write-ups of assets attributable to consummation of the sale of Assets, and *adding* the amount of any costs for which Purchaser is liable to Seller hereunder, and which this Agreement provides shall be deemed added to Net Working Capital; and, provided, further, that any amount paid (with the consent of Purchaser, not to be unreasonably withheld or delayed) by Sellers prior to the Closing Date in respect of the settlement or satisfaction of Severance Litigation shall be deemed added to Closing Net Working Capital at the Closing Date, and any amount so incurred, but unpaid as of the Closing Date shall not be deducted from Closing Net Working Capital as a current liability.

"Nevada Gaming Laws" shall mean the Nevada Gaming Control Act and the rules and regulations promulgated thereunder, the Clark County, Nevada Code and the rules and regulations promulgated thereunder, and other applicable local law.

"NRS" means Nevada Revised Statutes.

"Parent" has the meaning specified in the Recitals.

"Parent Savings Plan" means the Starwood Hotels & Resorts Worldwide, Inc. Savings and Retirement Plan.

"Parent Savings Trust" has the meaning specified in Section 6.3(ii).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Plan" shall mean any "employee pension benefit plan" as defined in Section 3(2) of ERISA (excluding any Multiemployer Plan) maintained in connection with the Business or which covers at least one Transferring Employee.

"Permits" means all licenses, permits, approvals or authorizations used in connection with or necessary for the use, ownership and operation of the Business or the Assets.

"Permitted Exceptions" has the meaning set forth in Section 2.1 (e)

"Permitted Liens" means (a) mechanics', carriers', workers', repairers', materialmen's, warehousemen's and other similar Liens arising or incurred in the ordinary course of business, (b) Liens for non-delinquent Taxes or Taxes which are being contested in good faith through appropriate proceedings, (c) Permitted Exceptions, and (d) Liens which will be released or otherwise terminated on or prior to the Closing.

"Person" means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, governmental agency or instrumentality or other entity of any kind.

"Personal Property Assets" means all Assets other than the Real Property Assets and water rights and development rights appurtenant to the Real Property Assets.

"Property Taxes" means real personal and intangible property taxes and assessments.

"Purchase Price" has the meaning specified in Section 1.2(a).

"Purchaser" has the meaning specified in the Preamble hereto.

"Purchaser Indemnified Party" has the meaning specified in Section 9.3(a).

"Purchaser Savings Plan" has the meaning specified in Section 6.3(a)(i).

"Purchaser Savings Trust" has the meaning specified in Section 63(a)(i).

"Real Property Assets" means the real property described on Schedule 11.1-b, together with all buildings, improvements and fixtures (other than such fixtures which are leased) located thereon, and all of SDIC's right, title and interest in and to all hereditaments and rights appurtenant thereto, including (i) any easements or rights of way pertaining to or benefiting such real property, (ii) all water rights, air rights and mineral, oil, gas and other hydrocarbon substance rights owned by SDIC with respect to such real property, and (iii) any interest in streets, alleys, advantages, and any strips or gores appurtenant thereto, if, and to the extent, included within the perimeter boundaries of such real estate, subject in each case to the Permitted Liens;

"Reference Balance Sheet" means the December 31, 1999 combined balance sheet included in the unaudited combined and combining balance sheets of the Sellers and Companies as of December 31, 1999, and the related unaudited combined and combining statements of income and of cash flows for each of the fiscal years then ended.

"Regulatory Authorizations" has the meaning specified in Section 6.2.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment or the workplace of any Hazardous Materials, or otherwise as defined in any Environmental Law.

"Representatives" is defined in Section 5.5(a).

"Retained Liabilities" means (i) all Financing Obligations of the Sellers or any of their consolidated Subsidiaries except the Assumed Financing Obligations, (ii) liabilities arising from operations (whether presently or formerly conducted) of Parent and its respective Affiliates, other than the operations of the Sellers, (iii) liabilities of the Excluded Companies, except for the obligations with respect to the Rimtech Employees as set forth in Section 6.3(a) hereof and obligations arising under the Rimtech Lease, and provided, that the Severance Litigation is and shall be the subject of Purchaser's undertaking pursuant to Section 9.2(c) hereof, (iv) liabilities for which Sellers have expressly assumed liability under this Agreement and (v) any other liability not disclosed to Purchaser, the failure to disclose which would have a Material Adverse Effect on Purchaser or the Business.

"Rimtech Lease" is defined on Schedule 11.1-b hereto

"Seller Indemnified Party" has the meaning specified in Section 9.2(a).

"Sellers" has the meaning specified in the Preamble hereto.

"Sellers' Materials" has the meaning set forth in Section 2.1 hereof.

"Seller's Threshold Amount" has the meaning specified in Section 9.3(b).

"Severance Litigation" has the meaning specified in Section 9.2(c).

"Starwood Proprietary Marks" means "Sheraton", "ITT Sheraton Luxury Collection," and "Starwood" and any derivative names or marks and all logos, designs and other intellectual property related thereto and related applications and registrations, if any, and all other intangible property and/or rights, and all goodwill associated therewith, directly or indirectly relating thereto.

"Starwood Timeshare Lots" has the meaning specified in Section 6.10.

"Straddle Period" means any taxable period of any of the Sellers that begins before and ends after the close of the Closing Date.

"Subsidiary" means, with respect to any Person, a corporation or other entity of which 50% or more of the voting power or economic value of the equity securities or equity interests is owned, directly or indirectly, by such Person, or the operations of which are otherwise consolidated with those of such Person under GAAP.

"Tax" or *"Taxes"* mean any and all taxes, charges, fees, levies or other assessments, including income, gross receipts, excise, real or personal property, sales, withholding, social security, retirement, unemployment, occupation, use, service, license, net worth, payroll, franchise and transfer and recording, imposed by the Internal Revenue Service or any taxing authority (whether domestic or foreign, including any federal, state, county, local or foreign government or any subdivision or taxing agency thereof (including a U.S. possession)), whether computed on a separate, consolidated, unitary, combined or any other basis; and such term shall include any interest whether paid or received, fines, penalties or additional amounts attributable to, or imposed upon, or with respect to, any such taxes, charges, fees, levies or other assessments. "

"Tax Return" or *"Tax Returns"* mean all reports, returns, declarations, claims for refund or statements of any kind or nature relating to Taxes, and any schedule or attachment thereto and any amendment thereof.

"Timeshare Lots" means, collectively, the Starwood Timeshare Lots and the DI Timeshare Lots.

"Title Insurer" means Nevada Title Company, or another title insurance company reasonably acceptable to Purchaser.

"Title Policies" has the meaning set forth in Section 6.10.

"Title Report" has the meaning set forth in Section 2.1(e).

"Title Report A" has the meaning set forth in Section 2.1(e).

"Title Report B" has the meaning set forth in Section 2.1(e).

"Transferring Employee" has the meaning set forth in Section 6.3.

"Union Employees" shall mean any Transferring Employee whose employment is subject to the terms of a collective bargaining agreement.

"Welfare Plan" means "employee welfare benefit plan" as defined in Section 3(1) of ERISA maintained in connection with the Business or which covers at least one Transferring Employee.

Section 11.2 *Terms and Usage Generally.*

The definitions referred to in Section 11.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Articles, Sections, Exhibits and

Schedules shall be deemed to be references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All Exhibits and Schedules attached hereto shall be deemed incorporated herein as if set forth in full herein. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". 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. References to a Person are also to its successors and permitted assigns. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument defined or referred to herein means such agreement, instrument or statute as from time to time amended,, modified or supplemented, including (in the case of agreements or instruments) by waiver or' consent and (in the case of statutes) by succession of comparable successor statutes, and references to all attachments thereto and instruments incorporated therein.

ARTICLE 12
MISCELLANEOUS

Section 12.1 *Waiver.* Either party to this Agreement may, at any time prior to the Closing, waive any of the terms or conditions of this Agreement or agree to an amendment or modification to this Agreement by an agreement in writing executed in the same manner as this Agreement.

Section 12.2 *Notices.* All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given when (i) delivered in person, (ii) three (3) days after posting in the United States mail if sent by registered or certified mail return receipt requested, (iii) one Business Day after depositing with a reputable, nationally recognized overnight courier service if priority overnight service is specified, or (iv) delivered by telecopy and promptly confirmed by delivery in person or post as aforesaid in each case, with postage prepaid, addressed as follows:

(a) If to Purchaser, to:

Valvino Lamore, LLC
One Shadow Creek Drive
North Las Vegas, NV 89031
Fax: (702) 399-1363
Attn: Stephen A. Wynn, Member

with a copy to:

Schreck Morris
300 South Fourth Street
12th Floor
Las Vegas, Nevada 89101
Fax: (702) 382-8135
Attn: LT. Jones, Esq.

(b) If to Sellers, to:

Starwood Hotels & Resorts Worldwide, Inc.
777 Westchester Avenue
White Plains, New York 10604
Fax: (914) 640-8260
Attn: Tom Smith

with a copy to:

Starwood Hotels & Resorts Worldwide, Inc.
777 Westchester Avenue
White Plains, New York 10604
Fax: (914) 640-8260
Attn: Thomas C. Janson, Jr., Esq.

with a copy to:

Sidley & Austin
555 West Fifth Street,
Suite 4000
Los Angeles, CA 90013-1010
Fax: (213) 896-6600
Attn: Marc I. Hayutin, Esq.
Sarah Spyksma, Esq.

or to such other address or addresses as the parties may from time to time designate in writing.

Section 12.3 *Assignment.* Purchaser shall not assign this Agreement or any part hereof without the prior written consent of Sellers. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Notwithstanding the foregoing, Purchaser may assign any of its rights and obligations under this Agreement (including, without limitation, its obligations under Section 5.6 and Section 5.7 hereof) (a) to a direct or indirect wholly-owned Subsidiary of Purchaser or (b) to Mirage or other Affiliates of Purchaser or Mirage in the event the merger contemplated to occur between Mirage and MGM shall not occur prior to Closing, so long as no such assignment delays the Closing or imposes additional costs on Sellers and *provided* that no such assignment will release Purchaser from its obligations hereunder and *provided*, further, that such assignee shall assume all of Purchaser's obligations hereunder, including without limitation, the obligations under Section 5.6 and Section 5.7 hereof.

Section 12.4 *Rights of Third Parties.* Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any Person, other than the parties hereto, any right or remedies under or by reason of this Agreement.

Section 12.5 *Closing Costs.* Sellers and Purchaser shall each bear their respective costs of negotiating and completing this transaction, including attorneys' and accountants' fees. The fees charged by Escrowee, and any and all survey, title and recording fees, real and personal property transfer fees, documentary Taxes or fees, and the costs of all premiums with respect to the Title Policies in accordance with Section 6.10 shall be paid one-half by Sellers, on the one hand, and one-half by Purchaser, on the other hand, except that the costs of any coverage premiums for insurance in excess of that portion of the Purchase Price reasonably allocable to the Real Property Assets and the value of the real property held by the Companies shall be borne solely by Purchaser. Sellers and Purchaser, on or before the Closing Date, shall each deposit with Escrowee in immediately available funds on or prior to the Closing Date an amount sufficient to cover each party's costs set forth herein.

Section 12.6 *Governing Law.* This Agreement shall be construed and enforced in' accordance with the laws of the State of Nevada.

Section 12.7 *Captions: Counterparts.* The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.8 *Entire Agreement.* This Agreement (including the Schedules, Exhibits and Annexes to this Agreement, which, although they may be bound separately, constitute part of this Agreement)

and that certain Confidentiality Agreement between Purchaser the parties relating to the transactions contemplated hereby (the "*Confidentiality Agreement*") constitute the entire agreement among the parties and supersede any other agreements, whether written or oral, that may have been made or entered into by or among any of the parties hereto or any of their respective Subsidiaries relating to the transactions contemplated hereby. No representations, warranties, covenants, understandings, agreements, oral or otherwise, relating to the transactions contemplated by this Agreement exist between the parties except as expressly set forth in this Agreement and the Confidentiality Agreement.

Section 12.9 *Amendments.* This Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing executed in the same manner as this Agreement and which makes reference to this Agreement.

Section 12.10 *Construction.* This Agreement is a result of negotiations among, and has been reviewed by Sellers, Parent and Purchaser, and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against Sellers, Parent, the Companies or Purchaser.

Section 12.11 *Effectiveness.* This Agreement shall become effective immediately upon execution of this Agreement by Purchaser and Sellers.

Section 12.12 *Consent to Jurisdiction.* Each of the parties hereto irrevocably submits to the exclusive jurisdiction of Clark County, Nevada for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the parties hereto agrees, to the extent permitted under applicable rules of procedure, to commence any action, suit or proceeding relating hereto in the United States District Court of Nevada. Each of the parties hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth in Section 12.2 shall be effective service of process for any action, suit or proceeding in Clark County, Nevada with respect to any matters to which it has submitted to jurisdiction in this Section 12.12. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) Clark County, Nevada, or (ii) the United States District Court for the State of Nevada, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 12.13 *WAIVER OF TRIAL BY JURY.* THE PARTIES HERETO HEREBY' WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BY EITHER PARTY AGAINST THE OTHER PARTY WITH RESPECT TO ANY MATTER ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

Section 12.14 *Time of the Essence.* The parties hereto agree that time is of the absolute essence, including the time and date on which all payments of money or deliveries of documents are required.

Section 12.15 *Further Assurances.* From time to time, at the request and expense of the requesting party, whether prior to, at or after the Closing, each party agrees to and shall execute and deliver such further instruments and take such other action as the requesting party may reasonably request in order to effectuate the transactions set forth herein.

Section 12.16 *Severability.* The invalidity or unenforceability of any one or more of the provisions of this Agreement or the Schedules hereto (or any portion thereof) shall not affect the validity or enforceability of any of the other provisions hereof (or the remaining portion thereof).

Section 12.17 *Cooperation.* Each party acknowledges that the other may be a party to audits, investigations and other proceedings following the Closing which relate to the Business or the Assets, and agrees to reasonably cooperate with such other party in connection with such proceedings.

Section 12.18 *No Recordation.* neither this Agreement, nor any memorandum or other notice of this Agreement, shall be recorded without Seller's prior written consent, which consent may be withheld in Seller's sole discretion.

Section 12.19 *Attorneys' Fees.* A party in breach of this Agreement shall, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this

Agreement. The payment of such expenses is in addition to any other relief to which such other party may be entitled.

Section 12.20 *Limitation on Liability of Wynn.* With the exception of his obligations and duties arising under Section 5.6 and Section 5.7 of this Agreement, Wynn's liability under this Agreement shall not survive the Closing.

Section 12.21 *Survival of Terms.* Subject to Section 12.20 hereof and unless otherwise expressly otherwise provided herein to the contrary, the terms and conditions of this Agreement which are intended by their terms to survive the Closing, including without limitation, Sections 1.5, 2.1, 2.2, 3.3, 5.5, 5.6, 5.7, 6.3, 6.4, 6.6(c), 6.7, 6.9, 12.3, 12,5, 12,6, 12.8, 12.13, 12.14, 12.15, 12.16, 12. 17 and 12.19 and Articles 9 and 10 hereof, shall survive the Closing.

ARTICLE 13
LOSS BY FIRE OR OTHER CASUALTY; CONDEMNATION

Section 13.1 *Fire or Other Casualty; Condemnation.* In the event that prior to the Closing Date, a Material Portion of the Assets is destroyed or the Assets suffer Material Damage (either a "*Material Casualty*"), or if condemnation proceedings are commenced against all or a Material Portion of the Business Premises (a "*Material Condemnation*"), Sellers shall promptly give Purchaser written notice of the occurrence of such damage, destruction or condemnation proceeding. Purchaser shall then have the right, exercisable by giving notice of such decision to Sellers within 10 days after receiving such written notice from Sellers of such damage, destruction or condemnation proceedings, to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder and the Deposit, without interest, shall be returned to Purchaser. If notwithstanding the occurrence of a Material Casualty, or a Material Condemnation, Purchaser elects within such 10 day period to accept the Assets in their then condition, all proceeds of insurance (other than any business interruption insurance), after deducting all reasonable expenses of Sellers in repairing such damage, if any, or Sellers' share of any such condemnation awards (but exclusive of awards for business interruption) shall be paid or assigned to Purchaser at the Closing with no reduction in the Purchase Price. In the event that, after the Effective Date hereof, there is damage to the Assets which does not constitute a Material Casualty or which is caused by Purchaser, its inspectors or their respective employees or agents, Purchaser shall not have the right to terminate the Agreement by reason thereof, but shall proceed to Closing, in which event Sellers shall (A) credit the amount of the applicable insurance deductible against the Purchase Price (except if such casualty is caused by Purchaser, or Purchaser's Inspectors or their employees or agents), and (B) transfer and assign to Purchaser all of Sellers' right, title and interest in and to all proceeds from all casualty and lost profits insurance policies maintained by Sellers with respect to the Business Premises, except those proceeds allocable to costs incurred by, and lost profits of, Sellers for the period prior to the Closing. In the event of condemnation which is not of a Material Condemnation, Purchaser shall not have the right to terminate this Agreement by reason thereof and all condemnation awards payable to Sellers by reason thereof shall be paid or assigned to Purchaser at the Closing with no reduction in the Purchase Price. This Article 13 is intended as an express provision with respect to destruction and condemnation which supersedes the provisions of the Nevada Uniform Vendor and Purchaser Risk Act NRS Section 113.030 et seq.

IN WITNESS WHEREOF the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: /s/ THOMAS M. SMITH

Name: Thomas M. Smith
Title: *President*

SHERATON GAMING CORPORATION

By: /s/ MARK LEFEVER

Name: Mark LeFever
Title: *Vice President—Treasurer*

SHERATON DESERT INN CORPORATION

By: /s/ MARK LEFEVER

Name: Mark LeFever
Title: *Vice President—Chief Operating Officer—Chief Financial Officer*

VALVINO LAMORE, LLC

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Sole Member*

/s/ STEPHEN A. WYNN

Stephen A. Wynn, an individual

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Exhibit 10.2

FIRST AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT

This FIRST AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT ("**Amendment**") is executed as of the 26th day of May, 2000 by and among STARWOOD HOTELS & RESORTS WORLDWIDE, INC., SHERATON GAMING CORPORATION and SHERATON DESERT INN CORPORATION (collectively, "**Sellers**") and VALVINO LAMORE, LLC and STEPHEN A. WYNN (collectively, "**Purchaser**").

RECITALS

A. Sellers and Purchaser executed that certain Asset and Land Purchase Agreement dated as of April 28, 2000 pursuant to which Sellers have agreed to sell and Purchaser has agreed to purchase The Desert Inn Hotel and Casino and other related assets (the "**Original Purchase Agreement**").

B. The Sellers and Purchaser desire to amend the Original Purchase Agreement to clarify certain reimbursement obligations, to revise the "Outside Date" for closing and other matters that are more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein, the parties do hereby agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in them in the Original Purchase Agreement.

2. Section 2.2(b) of the Original Purchase Agreement is hereby amended to provide that the Closing shall occur as soon as is reasonably practicable after Purchaser's receipt of all Gaming Permits, but in no event later than 10:00 a.m. on June 30, 2000 ("**Outside Date**"); provided, however, that Purchaser's receipt of such Gaming Permits shall in no event be a condition to its obligation to close on the Outside Date.

3. Notwithstanding the restrictions set forth in Section 4.1(b)(vi)(B), the Purchaser consents to Sellers' execution and delivery of a severance agreement for Marc Rubinstein in the form attached hereto as Exhibit A and agrees to assume upon the Closing any obligations arising thereunder.

4. Purchaser acknowledges that Sellers have elected with Purchaser's consent to terminate John Banner for convenience prior to the Closing and to pay to him a severance benefit in a single lump sum. Notwithstanding the terms of a prior letter dated May 12, 2000 from Mark Lefever to Marc Schorr regarding such payment, the parties agree that such severance payment is not properly characterized as a receivable to be included in the calculation of Closing Net Working Capital and instead shall be reimbursed to Sellers at Closing. The parties shall advise Escrowee that the amount of such payment shall be reflected on Escrowee's closing statement as an additional payment due Sellers at Closing.

5. The Original Purchase Agreement as modified by this Amendment shall continue in full force and effect and this Amendment shall constitute a part of the Purchase Agreement. All references in the Original Purchase Agreement to itself shall be deemed to be references to the Original Purchase Agreement as amended hereby and the Original Purchase Agreement as amended hereby shall be referred to as the "Purchase Agreement."

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: /s/ Thomas M. Smith

Name: Thomas M. Smith
Title: Senior Vice President

SHERATON GAMING CORPORATION

By: _____

Name: _____
Title: _____

SHERATON DESERT INN CORPORATION

By: _____

Name: _____
Title: _____

VALVINO LAMORE, LLC

By: _____

Name: Stephen A. Wynn

Title: Sole Member

Stephen A. Wynn, an individual

5. The Original Purchase Agreement as modified by this Amendment shall continue in full force and effect and this Amendment shall constitute a part of the Purchase Agreement. All references in the Original Purchase Agreement to itself shall be deemed to be references to the Original Purchase Agreement as amended hereby and the Original Purchase Agreement as amended hereby shall be referred to as the "Purchase Agreement."

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By:

Name:

Title:

SHERATON GAMING CORPORATION

By: /s/ Mark Lefever

Name: Mark Lefever

Title: Vice President & Treasurer

SHERATON DESERT INN CORPORATION

By: /s/ Mark Lefever

Name: Mark Lefever

Title: Vice President, COO/CFO

VALVINO LAMORE, LLC

By:

Name: Stephen A. Wynn

Title: Sole Member

Stephen A. Wynn, an individual

5. The Original Purchase Agreement as modified by this Amendment shall continue in full force and effect and this Amendment shall constitute a part of the Purchase Agreement. All references in the Original Purchase Agreement to itself shall be deemed to be references to the Original Purchase Agreement as amended hereby and the Original Purchase Agreement as amended hereby shall be referred to as the "Purchase Agreement."

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By:

Name:

Title:

SHERATON GAMING CORPORATION

By: _____

Name: _____

Title: _____

SHERATON DESERT INN CORPORATION

By: _____

Name: _____

Title: _____

VALVINO LAMORE, LLC

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn

Title: Sole Member

/s/ Stephen A. Wynn

Stephen A. Wynn, an individual

Exhibit A

May , 2000

Dear Marc:

This letter of understanding supersedes any other previous agreement or arrangement, express or implied, relating to the subjects addressed in this letter. In recognition of the intent to sell The Desert Inn and to provide you with some measure of security, we are pleased to offer you a contingent change of control severance benefit. In the event The Desert Inn is sold and you are terminated for reasons other than cause within six months of the closing date of the sale, you will receive as your sole and exclusive severance benefit a lump sum payment equal to 12 months of your then-current base salary; provided, however, that if you are rehired by the purchaser of The Desert Inn or any of its affiliates, you will be required to refund as an offset any amounts you earn from that entity within the 12-month period following your termination.

This benefit is conferred with the intent of providing management continuity for The Desert Inn leading up to any sale and immediately thereafter. This letter of understanding and the benefits conferred herein are in no way intended to alter the at-will nature of your employment with The Desert Inn. Further, we expect you to continue to perform your job duties at a high level and to remain a positive influence on the hotel and the other employees.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Mark Lefever
COO/CFO

ACCEPTED AND AGREED TO:

Date: _____

Marc Rubinstein

QuickLinks

Exhibit 10.3

SECOND AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT

This SECOND AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT ("**Second Amendment**") is executed as of the 16th day of June, 2000 by and among STARWOOD HOTELS & RESORTS WORLDWIDE, INC., SHERATON GAMING CORPORATION and SHERATON DESERT INN CORPORATION (collectively, "**Sellers**") and VALVINO LAMORE, LLC, STEPHEN A. WYNN, RAMBAS MARKETING CO., LLC., a Nevada limited liability company ("**Rambas**") and DESERT INN WATER COMPANY, LLC, a Nevada limited liability company (collectively, "**Purchaser**").

RECITALS

A. Sellers and Purchaser executed that certain Asset and Land Purchase Agreement dated as of April 28, 2000 pursuant to which Sellers have agreed to sell and Purchaser has agreed to purchase The Desert Inn Hotel and Casino and other related assets (the "**Original Purchase Agreement**").

B. The Original Purchaser Agreement was amended by a First Amendment to Asset and Land Purchase Agreement, executed as of May 26, 2000 (the "**First Amendment**," and together with the Original Purchase Agreement, the "**Amended Agreement**") and was partially assigned to Rambas and DIWC pursuant to Assignment and Assumption Agreements.

C. The Sellers and Purchase desire to amend the provisions of Section 5.6 of the Amended Agreement as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein, the parties do hereby agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in them in the Amended Agreement.

2. Section 5.6 of the Amended Agreement is amended hereby to add the following sentence at the end of such Section:

> "Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed or interpreted as preventing or inhibiting Purchaser or its affiliates from encumbering the assets with a deed of trust and/or other security instruments in connection with the financing by Purchaser of the acquisition, ownership, operation or redevelopment of the Assets, or as preventing or prohibiting the holder of such security from realizing thereon, and this Section 5.6 shall not be binding upon such holder or any successor of such holder (other than Purchaser or any affiliate of Purchaser) following such realization."

3. Pursuant to Section 10.2 of the Purchase Agreement, the parties confirm their agreement that, for purposes of determining the real property transfer tax, the portion of the Purchase Price allocable to the Real Property Assets is $188,454,742.86.

4. The second clause in the definition of Retained Liabilities contained in Section 11.1 of the Amended Agreement is hereby amended and restated as follows:

> "(ii) liabilities arising from operations (whether presently or formerly conducted) of Parent and its respective Affiliates, other than the operations of the Companies, SDIC, SGC, or any of their subsidiaries,"

---

5. The Amended Agreement as modified by this Second Amendment shall continue in full force and effect and this Second Amendment shall constitute a part of the Amended Agreement. All references in the Amended Agreement to itself shall be deemed to be references to the Amended Agreement as amended hereby and the Amended Agreement as amended hereby shall be referred to as the "Agreement."

6. This Second Amendment may be signed in one or more counterparts, which, together, shall constitute a single document.

IN WITNESS WHEREOF, the parties have hereunto caused this Second Amendment to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: /s/ THOMAS SMITH

Name: Thomas Smith
Title: Senior Vice-President

SHERATON GAMING CORPORATION

By: /s/ THOMAS SMITH

Name: Thomas Smith
Title: Vice-President

SHERATON DESERT INN CORPORATION

By: /s/ MARK LEFEVER

Name: Mark Lefever
Title: Vice President

VALVINO LAMORE, LLC

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Sole Member

/s/ STEPHEN A. WYNN

Stephen A. Wynn, an individual

DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Sole Member

RAMBAS MARKETING CO., LLC,
a Nevada limited liability company

By: VALVINO LAMORE, LLC
Its: Sole Member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Member

QuickLinks

Exhibit 10.4

THIRD AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT ("**Third Amendment**") is executed as of the 22nd day of June, 2000 by and among STARWOOD HOTELS & RESORTS WORLDWIDE, INC., SHERATON GAMING CORPORATION and SHERATON DESERT INN CORPORATION (collectively, "**Sellers**") and VALVINO LAMORE, LLC ("**VL**"), STEPHEN A. WYNN ("**WYNN**"), RAMBAS MARKETING CO., LLC., a Nevada limited liability company ("**Rambas**") and DESERT INN WATER COMPANY, LLC, a Nevada limited liability company ("**DIWC**"; together with Rambas, Wynn and VL, the "**Purchaser**").

RECITALS

A. Sellers and Purchaser executed that certain Asset and Land Purchase Agreement dated as of April 28, 2000 pursuant to which Sellers have agreed to sell and Purchaser has agreed to purchase The Desert Inn Hotel and Casino and other related assets (the "**Original Purchase Agreement**").

B. The Original Purchaser Agreement was amended by a First Amendment to Asset and Land Purchase Agreement, executed as of May 26, 2000 (the "**First Amendment**") and Purchaser's rights and obligations under the Original Purchase Agreement, as amended, were partially assigned to Rambas and DIWC pursuant to Assignment and Assumption Agreements.

C. The Original Purchase Agreement was further amended by a Second Amendment to Asset and Land Purchase Agreement, executed as of June 16, 2000 (the "**Second Amendment**"). The Original Purchase Agreement as amended by the First Amendment and the Second Amendment and as partially assigned, is referred to herein as the "**Purchase Agreement**").

D. Purchasers have now received all Gaming Permits approvals necessary to consummate the transactions contemplated by the Agreement, as heretofore amended, and the parties therefore intend to close this transaction on site at the Business effective as of 12:01 a.m., June 23, 2000.

E. In preparation for the Closing, the parties have found themselves in dispute over a number of items which they wish to resolve fully and finally prior to Closing.

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AMENDMENT

1. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in them in the Purchase Agreement.

2. The Purchase Agreement is hereby amended by adding thereto new Section 1.4 as follows:

"Section 1.4. Short-Term Disability Claims. Sellers maintain a blanket short-term disability insurance policy for their employees through a self-funded short-term disability policy administered through Hartford Insurance Companies ("**STD Policy**"). Sellers have advised Purchaser and Purchaser has agreed that it would not be practical to terminate the STD Policy as to the Business prior to June 30, 2000 (the "**Term Date**"). Accordingly:

(i) Sellers shall receive a credit and Purchaser a debit as against the Purchase Price in the amount of $46,646.59, reflecting Sellers' liability not reflected in the books and records of SDIC for days of disability pay ("**Disability Days**") Sellers will be required to pay attributable on account of Disability Days from and after June 23, 2000, under currently pending claims under the STD Policy.

(ii) Sellers will be responsible (a) to administer all claims made on the STD Policy prior to the Term Date and (b) to pay, without reimbursement, for any Disability Days occurring through June 22, 2000 for which claims are made within 90 days of the occurrence or purported occurrence giving rise to such claim; notwithstanding anything to the contrary contained in the Purchase Agreement, claims for such Disability Days shall not be deemed included in Assumed Liabilities;

(iii) Purchaser shall be responsible (a) to pay all Disability Days incurred from and after Closing, whether or not such Disability Days relate to a disability first occurring or commencing before or after Closing and (b) to pay or, at Purchaser's sole cost and expense, defend against claims for Disability Days occurring prior to June 23, 2000 which were not timely reported (*i.e.* within 90 days of the occurrence or purported occurrence) and the liability therefor shall, in each case, notwithstanding any provision to the contrary, constitute and be included as an Assumed Liability. Sellers will invoice Purchaser in one or more installments for any such Disability Day, and Purchaser shall, on presentation of appropriate back-up materials as required below, reimburse Sellers within ten (10) days of invoice therefor, or in the case of clause (b) commence, at its costs, defense there against. Purchaser agrees that such invoices not paid when due shall bear interest at 10% per annum until paid. Sellers shall provide such reasonable back-up materials as are necessary to allow Purchaser to evaluate the claims submitted, if any. Sellers have advised Purchaser of Sellers' normal practice of invoicing individual properties covered under the STD Policy only after the end of each calendar year. Sellers reserve the right, at their sole discretion, to continue such practice or to invoice Purchaser periodically.

(iv) Sellers shall cause the STD Policy to be terminated as to the Business for periods commencing from and after July 1, 2000 and Purchaser shall be solely responsible for its own short term disability policies from and after such date.

3. Section 1.5 of the Purchase Agreement, including without limitation all references therein to GAAP and or to consistency with "past practices", is hereby deemed amended and modified to reflect each of the following agreements of the parties, which shall apply in the calculation of both the Estimated Closing Net Capital Working Amount and for the final calculations of the Closing Net Working Capital:

(a) The "Capital Expenditure Adjustment Amount" is $16,097.

(b) Current liabilities shall be deemed to include only 35.565% (632, divided by 1,777) of the face amount of liabilities for chips and tokens outstanding on Sellers' books and records as of Closing.

(c) Reserves of 37% of face amounts of accounts receivable shall be conclusively deemed reasonable, consistent with SDIC's past practices and the Reference Balance Sheet, GAAP and sound accounting practices in the hotel and casino industry. Purchaser's sole inquiry, pursuant to Section 1.5(b) of the Purchase Agreement and otherwise, with respect to the net amount of accounts receivable included in Closing Net Working Capital shall be to verify the existence of a marker, evidence of indebtedness or other documentation supporting the face amount of each account receivable.

(d) Purchaser will not acquire Sellers' cash in bank or Rimtech cash and such items have therefore been excluded from current assets.

(e) The Estimated Closing Net Working Capital Amount shall be conclusively $3,335,000, which amount is based on the SDIC balance sheet dated as of May 31, 2000, adjusted as shown on the worksheet attached hereto as Schedule 1.

(f) For purposes of determining Closing Net Working Capital, room receipts for rooms occupied during the night on which the Closing shall occur (*i.e.*, from the night of June 22, 2000 to the morning of June 23, 2000), shall be divided equally between Seller and Purchaser, with Sellers' one half share being credited to the Closing Net Working Capital.

(g) As Purchaser completes the initial "true-up" of current assets and current liabilities, including the initial results of pre-Closing/Closing counts of inventory, cash on hand, chips and tokens, and accounts receivable, as well as general ledger, subledgers and final data concerning Sellers' liability for the Starwood Preferred Guest Program, currently estimated at $47,000, Purchaser will promptly and in all events within fifteen (15) days following the Closing deliver to Sellers all relevant data and Backup Material regarding such items. Upon receipt of all such data and Backup Material, Sellers shall have an additional fifteen (15) days within which to finalize and deliver to Purchaser Seller's updated calculation of Estimated Net Closing Working Capital (the "**Updated Calculation**"). Purchaser shall then have the balance of the original ninety (90) day period contemplated by Section 1.5 (b) of the Purchase Agreement, to deliver to Sellers Purchaser's calculation of Closing Net Working Capital and Backup Material. The failure of Purchaser to provide such calculation and such Backup Material shall be conclusively deemed Purchaser's acceptance of the Updated Calculation if Sellers have submitted same, or of Sellers' calculation of Estimated Closing Net Working Capital ($3,335,000) if Sellers shall fail timely to submit the Updated Calculation.

Subsection (g), above, shall not be construed to supersede the dispute resolution provisions set forth in Section 1.5 (c) of the Purchase Agreement. However, to the extent of any inconsistency between the terms of this Section 3 and the terms of the Original Purchase Agreement and any prior amendment thereto, the terms of this Section 3 shall be controlling.

4. Section 2.2 of the Purchase Agreement is hereby amended to reflect the following:

(i) Closing shall take place at the offices of the Business, The Desert Inn Resort & Casino, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, at 12:01 a.m., June 23, 2000.

(ii) The items referred to in Section 2.2(b)(ii)-(iv) shall be accomplished by delivery to Escrowee of the documents referred to therein on or before the close of business June 22, 2000, with all of which items and documents Sellers' counsel and Purchaser's counsel have acknowledged their satisfaction.

(iii) Escrowee, through an authorized representative, shall attend the Closing, shall countersign Closing escrow instructions approved by Sellers and Purchaser, shall issue an undertaking in favor of Purchaser and Sellers to disburse funds and record all recordable documents immediately upon the opening of business on June 23, 2000, and shall cause Escrowee's parent corporation, Commonwealth Land Title Insurance Company, to issue an insured closing letter in favor of Sellers which is satisfactory to Sellers in their sole discretion.

(iv) Section 2.2(d)(i) is hereby deleted in its entirety.

5. Purchaser acknowledges that from time to time since the date of the Original Purchase Agreement Sellers have, directly or through their counsel, advised Purchaser of additional facts, including litigation and additional contracts, not previously scheduled in the Original Purchase Agreement. Purchaser further acknowledges that with respect to those Contracts for which consent is required in connection with the assignment thereof, Sellers have requested such consents, the majority of which requests have not been answered. Sellers make no representation or warranty as to the efficacy of any assignment or purported assignment of such Contracts.

6. With respect to Section 6.6 of the Purchase Agreement, the parties acknowledge that they have not yet received PUC approval for the transfer of the DIIC Shares. Accordingly, solely for purposes of agreeing upon the form of documentation and to avoid the necessity of a subsequent closing, the parties are, concurrently with the Closing, depositing with Escrowee undated lost certificate affidavits, stock powers, assignment and assumption agreements and other documents, including undated resignations of certain officers and directors of DIIC and have instructed Escrowee to withhold from the Purchase Price to be disbursed to Sellers at Closing the amount of the DIIC Shares Consideration, which monies shall not be disbursed to Sellers except upon lawful transfer of the DIIC Shares. The parties agree that the DIIC Shares Consideration shall constitute that portion of the Purchase Price which is allocable to the DIIC Shares, which the parties agree is $17,500.

7. The draft escrow settlement statement, attached hereto as Schedule 2, accurately reflects the Parties' agreement as to allocation of the purchase price to Real Property Assets and the Starwood Timeshare Interests and the DI Timeshare Interests.

8. Section 11.1 of the Purchase Agreement is hereby amended as follows:

(a) The provision in Clause (r) of the definition of "Assets" set forth in Section 11.1 of the Purchase Agreement is amended to provide as follows:

"provided, however, an amount equal to 64.435% of the liabilities represented by the chips and tokens in circulation shall be excluded from the calculation of Closing Net Working Capital and the obligation to redeem all chips and tokens shall be an Assumed Liability."

(b) The definition of Assumed Liabilities is amended by adding the following to the end of Subsection (i) thereof, prior to ";":

"and keno tickets"

9. Sellers shall receive a credit at Closing for the sum of outstanding charges due under the Occupancy Agreement dated May 26, 2000 between SDIC on the one hand and Wynn and VL on the other hand, and subject to Section 3(g) of this Amendment, Purchaser shall receive a credit at Closing in the amount of $47,000 representing the liability under the Starwood Preferred Guest Program.

10. Pursuant to Section 2.1(e) of the Purchase Agreement, Purchaser has notified Sellers of Purchaser's objection to the lis pendens filed June 21, 2000, in connection with Case No. A415224 (the "Lis Pendens") as an Unpermitted Exception. Sellers have accordingly caused Title Company to commit to issue the Title Policy without showing as an exception thereto the Lis Pendens.

11. The Purchase Agreement, as modified by this Amendment, shall continue in full force and effect, and this Amendment shall constitute a part of the Purchase Agreement. All references in the Purchase Agreement to itself shall be deemed references to the Purchase Agreement as amended hereby.

IN WITNESS WHEREOF, the parties have hereunto caused this Second Amendment to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: /s/ THOMAS M. SMITH

Name: Thomas Smith
Title: Senior Vice President

SHERATON GAMING CORPORATION

By: /s/ THOMAS M. SMITH

Name: Thomas Smith
Title: Vice President

SHERATON DESERT INN CORPORATION

By: /s/ MARK LEFEVER

Name: Mark Lefever
Title: COO/CFO, Vice President

VALVINO LAMORE, LLC

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Sole Member

/s/ STEPHEN A. WYNN

Stephen A. Wynn, an individual

DESERT INN WATER COMPANY, LLC,
A NEVADA LIMITED LIABILITY COMPANY

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Sole Member

RAMBAS MARKETING CO., LLC,
A NEVADA LIMITED LIABILITY COMPANY LLC

By: Valvino Lamore
Its: Sole Member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Sole Member

QuickLinks

Exhibit 10.5

FOURTH AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT

This FOURTH AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT ("**Fourth Amendment**") is executed as of the 27th day of October, 2000 by and among STARWOOD HOTELS & RESORTS WORLDWIDE, INC., SHERATON GAMING CORPORATION and SHERATON SGC SUB CORPORATION (f/k/a SHERATION DESERT INN CORPORATION) (collectively, "**Sellers**") and VALVINO LAMORE, LLC ("**VL**"), STEPHEN A. WYNN ("**Wynn**"), RAMBAS MARKETING CO., LLC. ("**Rambas**") and DESERT INN WATER COMPANY, LLC ("**DIWC**"; together with Rambas, Wynn and VL, the "**Purchaser**").

RECITALS

A. Sellers and Purchaser executed that certain Asset and Land Purchase Agreement dated as of April 28, 2000 pursuant to which Sellers agreed to sell and Purchaser agreed to purchase The Desert Inn Hotel and Casino and other related assets (the "**Original Purchase Agreement**").

B. The Original Purchase Agreement was amended by (i) a First Amendment to Asset and Land Purchase Agreement, executed as of May 26, 2000 (the "First Amendment"), (ii) a Second Amendment to Asset and Land Purchase Agreement, executed as of June 16, 2000 (the "**Second Amendment**"), and (iii) a Third Amendment to Asset and Land Purchase Agreement, executed as of June 22, 2000 (the "**Third Amendment**"). The Original Purchase Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment is referred to herein as the "Purchase Agreement."

C. Subsequent to Closing, the parties found themselves in dispute concerning the calculation of Closing Net Working Capital.

D. The parties are nearing a resolution of their dispute concerning the calculation of Closing Net Working Capital and desire to extend certain timetables set forth in the Purchase Agreement in order to provide additional time to finally resolve such dispute.

Now, THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AMENDMENT

1. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Purchase Agreement.

2. Pursuant to Section 1.5(c) of the Purchase Agreement, if Sellers did not agree with Purchaser's calculation of the Closing Net Working Capital, Sellers were entitled to a forty-five (45) day period after receipt of Purchaser's calculation of the Closing Net Working Capital to provide Purchaser with written notice of such disagreement. The parties hereby amend the Purchase Agreement to provide that such forty-five (45) day period is extended to, and shall expire on, November 17, 2000. The remainder of the dispute resolution provisions set forth in Section 1.5(c) of the Purchase Agreement shall remain in full force and effect.

3. The Purchase Agreement, as modified by this Fourth Amendment, shall continue in full force and effect, and this Fourth Amendment shall constitute a part of the Purchase Agreement. All references in the Purchase Agreement to itself shall be deemed references to the Purchase Agreement as amended hereby.

4. This Fourth Amendment may be signed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument. Facsimile copies hereof and facsimile signatures hereon shall have the force and effect of originals.

IN WITNESS WHEREOF, the parties have hereunto caused this Fourth Amendment to be duly executed as of the date first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: /s/ Thomas M. Smith

Name: Thomas M. Smith
Title: Senior Vice President

SHERATON GAMING CORPORATION

By: /s/ Thomas M. Smith

Name: Thomas M. Smith
Title: Vice-President

SHERATON SGC SUB COPORATION (f/k/a SHERATON DESERT INN CORPORATION)

By: /s/ Thomas M. Smith

Name: Thomas M. Smith
Title: President

Valvino Lamore, LLC

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Manager

/s/ Stephen A. Wynn

Stephen A. Wynn, an individual

Desert Inn Water Company, LLC

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Sole Member

Rambas Marketing Co., LLC

By: Valvino Lamore, LLC
Its: Sole Member

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Manager

QuickLinks

Exhibit 10.6

FIFTH AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT

This FIFTH AMENDMENT TO ASSET AND LAND PURCHASE AGREEMENT ("**Fifth Amendment**") is executed as of the 3RD day of November, 2000 by and among STARWOOD HOTELS & RESORTS WORLDWIDE, INC., SHERATON GAMING CORPORATION and SHERATON SGC SUB CORPORATION (f/k/a SHERATION DESERT INN CORPORATION) (collectively, "**Sellers**") and VALVINO LAMORE, LLC, STEPHEN A. WYNN, RAMBAS MARKETING CO., LLC. and DESERT INN WATER COMPANY, LLC (collectively, "**Purchaser**").

RECITALS

A. The parties are signatory to that certain Asset and Land Purchase Agreement dated as of April 28, 2000, as amended by First Amendment dated May 26, 2000, Second Amendment dated June 16, 2000, Third Amendment dated as of June 22, 2000 ("**Third Amendment**") and Fourth Amendment dated as of October 27, 2000 (all such documents collectively, as so amended, the "**Agreement**").

B. Closing as defined under the Agreement has occurred, Sellers have submitted the Updated Calculation, Purchaser has submitted its calculation of Closing Net Working Capital, each as defined in the Agreement; Seller has informally objected thereto, and the parties are in substantial dispute with respect to numerous items affecting the calculation of Closing Net Working Capital.

C. The parties desire to resolve all such disputes, to amend the Agreement to clarify Paragraph 5.6 thereof, and also to make several other changes to the Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AMENDMENT

1. *Definitions.* Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

2. *New Members in Valvino Lamore, LLC.* Nothing contained in Paragraph 5.6 nor in any other provision of the Agreement shall be construed to require Parent's or Sellers' consent to, or otherwise preclude the admission by Valvino Lamore, LLC, of one or more members in addition to Stephen A. Wynn, so long as Stephen A. Wynn remains in control of Valvino Lamore, LLC, either as its sole Manager or, if Valvino Lamore, LLC, is later governed by a Board of Managers, as the controlling member of such Board of Managers.

3. *Deficit Amount.* The Deficit Amount referred to in Section 1.5(d) is hereby conclusively deemed for all purposes to be the sum of $1,000,000, inclusive of interest accruing through the fifth (5th) business day following execution and delivery by Sellers and Purchaser of this Fifth Amendment, and, accordingly, Parent will, within such five (5) Business Day period, pay to Valvino Lamore, LLC, the sum of $1,000,000 in full satisfaction of any and all obligations of Sellers to pay the Deficit Amount and interest thereon. Each party acknowledges that the foregoing figure represents the settlement of a substantial dispute, and that neither Purchaser nor Sellers have agreed to the calculations of the other. Each party, having had the opportunity to review the calculations of the other with its accountants and legal counsel, has agreed on the settlement described above. Accordingly, notwithstanding any future discovery of the existence or amount of any fact, circumstance, condition, asset, obligation or liability (collectively, "**New Information**"), knowledge of which New Information would or could have affected either Sellers' or Purchaser's willingness to enter into this Fifth Amendment, there shall be no further adjustment of Closing Net Working Capital nor any liability on the part of the either Sellers or Purchaser on account of any such New Information. Without limitation of the foregoing, Sellers'

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indemnity obligations, whether pursuant to Paragraph 9.3 of the Agreement or otherwise, shall not extend to or be affected by any New Information which could or might have affected the calculation of Closing Net Working Capital, nor shall any such New Information be included in the calculation of Sellers' Threshold Amount pursuant to Paragraph 9.3(b) of the Agreement. Sellers and Purchaser waive to the full extent permitted by law any provision of any applicable law which would otherwise afford either of them the ability to assert any liability on the part of the other by reason of any such New Information.

4. *Receivables Payment.* Notwithstanding the provisions of Paragraph 3, above, concurrently with Sellers' payment of the Deficit Amount, Sellers shall pay to Purchaser the sum of $346,871 (the "**Receivables Payment**"), representing reimbursement to Purchaser for funds erroneously paid to Sellers after the Closing in the gross amount of $361,978 by account debtors or credit card companies on account of Accounts Receivable of the Business purchased by Purchaser, less credit card fees of $15,107 paid by Sellers with respect thereto. Upon payment of the Receivables Payment, Purchaser forever releases and discharges Sellers from any and all further obligations with respect to the Accounts Receivable as of September 30, 2000; provided, however, that Sellers shall continue to account to Purchaser for any collections that Sellers may receive after September 30, 2000, on account of the Accounts Receivable, and that Purchaser will account to Sellers for any credit card charges paid by Sellers after September 30, 2000 with respect to Accounts Receivable.

5. *Long-Distance Telephone Charges.* Purchaser acknowledges that at Purchaser's request, Sellers refrained until recently from canceling Sellers' contract for long-distance telephone service from the Property. Without limiting its obligations under the Agreement as in effect immediately prior to execution of this Fifth Amendment, Purchaser confirms its obligation and agreement to indemnify and hold Sellers harmless from any and all claims, demands, damages, losses, liabilities, costs and expenses, arising out of the continuation of that contract (insofar as the same applied to the Property) from and after the Closing.

6. *Availability of Certain Books and Records.* Purchaser shall make available to Sellers the books and records of the Business pertaining to periods ending prior to June 23, 2000, including, without limitation, all cancelled checks, bank statements, marker information and bank reconciliations applicable to operations of the Business through June 22, 2000. Upon request by Sellers, Purchaser will copy any such books and records and deliver same to Sellers, the costs of such copying and delivery to be shared equally between Purchaser and Sellers.

7. *Cooperation in Audits.* Without limiting Purchaser's obligations pursuant to Paragraphs 6.7 (Post-Closing Cooperation) and 10.3 (Cooperation) of the Agreement, Purchaser acknowledges Sellers' current need for assistance from Mark LeFever and Marc Rubinstein in connection with currently pending income tax and gaming tax audits of Sellers' operation of the Business, and Seller's obligation under applicable Gaming Laws to file final financial statements for the Business as conducted by Sellers through and including June 22, 2000. Accordingly, for so long as either may continue to be employed by Purchaser, Purchaser will make Mark LeFever and Marc Rubinstein available for consultation with Sellers and authorize Mark LeFever to execute a financial representation letter to Arthur Andersen in customary form to the effect that such final statements are true and correct to the best of his knowledge and belief.

8. *Further Assurances.* The parties agree to execute such further documents and take such further actions as may be necessary or reasonably requested by either Sellers or Purchaser to effectuate the purposes of this Amendment.

9. *Continued Force and Effect.* As amended hereby, the Agreement shall continue in full force and effect, and this Fifth Amendment shall constitute a part of the Agreement. All references in the Agreement to itself shall be deemed references to the Agreement as amended hereby.

10. *Counterparts.* This Fifth Amendment may be signed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument. Facsimile copies hereof and facsimile signatures hereon shall have the force and effect of originals.

IN WITNESS WHEREOF, the undersigned have caused this Fifth Amendment to Asset and Land Purchase Agreement to be executed by their officers thereunder duly authorized, as of the day and year first above written.

STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: /s/ THOMAS M. SMITH

Name: Thomas M. Smith
Title: *Vice-President*

SHERATON GAMING CORPORATION

By: /s/ THOMAS M. SMITH

Name: Thomas M. Smith
Title: *Vice-President*

SHERATON SGC SUB COPORATION
f/k/a SHERATON DESERT INN CORPORATION

By: /s/ THOMAS M. SMITH

Name: Thomas M. Smith
Title: *President*

VALVINO LAMORE, LLC

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Manager*

/s/ STEPHEN A. WYNN

Stephen A. Wynn, an individual

DESERT INN WATER COMPANY, LLC,
a Nevada limited liability company

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Sole Member*

RAMBAS MARKETING CO., LLC,

a Nevada limited liability company

By: Valvino Lamore, LLC
Its: Sole Member

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: *Manager*

QuickLinks

Exhibit 10.8

LEASE AGREEMENT

between

VALVINO LAMORE, LLC,

Landlord

and

WYNN RESORTS, LLC,

Tenant

Dated November 1, 2001

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into as of the 1st day of November, 2001 by and between **Valvino Lamore, LLC,** a Nevada limited liability company ("Landlord"), and **Wynn Resorts, LLC,** a Nevada limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of a building located at 3145 Las Vegas Blvd. South, in Clark County, Nevada (the "Building").

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord an area located in the Building upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between Landlord and Tenant as follows:

SECTION 1
DEMISED PREMISES

1.1 Landlord hereby leases to Tenant and Tenant hereby leases from Landlord commercial premises within the Building, consisting of 3,015 square feet of floor space for the gallery and attached retail, office and storage space, 225 square feet of floor space for the coffee concession and 1,052 square feet of floor space for additional back-of-house storage space, for a total of 4,292 square feet of floor space ("Total Square Feet"), as more particularly depicted on Exhibit "A" attached hereto, plus all fixtures, equipment and property located therein or thereon (the "Premises"). Landlord reserves to itself the use of the roof, exterior walls and the area above and below the Premises together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements now or in the future leading through the Premises and which serve other parts of the Building, except that such rights shall not materially interfere with Tenant's right to visibility, egress and operations. Except as otherwise provided in Section 1.2 hereof, Tenant shall be solely responsible for all necessary improvements, build-out, furnishings, fixtures and equipment for the Premises, which shall be in accordance with drawings and specifications subject to Landlord's prior written approval.

1.2 Tenant shall be responsible, at its sole cost, for decorating, fixturizing and equipping the interior of the Premises, including, without limitation, floor and wall coverings, duct work for distribution of air conditioning and heating within the Premises, electrical wiring from a panel, furnishings, decorations, light fixtures and interior doors ("Tenant's Work"). If requested by Landlord, Tenant shall use only union labor to perform Tenant's Work. In addition, Tenant agrees that the proposed furnishings, fixtures, floor and wall covering, decor, architectural layout and color scheme for the Premises shall be subject to the prior written approval of Landlord (which approval shall not be unreasonably withheld or delayed).

SECTION 2
TERM

2.1 This Lease shall be effective as of November 1, 2001. The term of the Lease (the "Lease Term") and payment of Rent (as defined in Section 3.1 hereof) shall commence (the "Commencement Date") on the day that Tenant commences the conduct of its business upon the Premises, and shall continue for a period of one (1) year thereafter unless terminated earlier as elsewhere herein provided. On or before the Commencement Date, Tenant shall provide Landlord the following:

(a) Written verification by Tenant's architect that Tenant's Work has been completed;

(b) A copy of the recorded Notice of Completion, if one is recorded, and of the Certificate of Occupancy issued by the County of Clark, Nevada with respect to the Premises;

(c) Copies of signed unconditional lien releases or other evidence reasonably satisfactory to Landlord that all Tenant's Work has been paid in full or bonded and that no claim of any

mechanic or materialman may become a lien on the Premises or the Building and evidence that workmen's compensation premiums have been paid in full; provided, however, that any lien release required to be recorded in order to release any filed claim or lien shall be notarized; and

(d) Insurance certificates and other evidence, satisfactory to Landlord, of Tenant's compliance with Section 13 of this Lease.

Within ten (10) days after Tenant opens for business on the Premises, Tenant shall also provide Landlord with a written acknowledgment of the Commencement Date.

2.2 In the event Tenant is not then in default of its obligations hereunder beyond any applicable cure period and this Lease has not previously been terminated, after the expiration of the initial Lease Term, the Lease Term shall continue on a month-to-month basis for up to an additional twenty-four (24) months (after the expiration of the initial Lease Term), upon the same terms and conditions as are set forth in this Lease. At any time during any such extension of the initial Lease Term, either party may terminate the Lease by delivering written notice no later than ten (10) days prior to the expiration of any thirty (30) day extension period. In the event that such notice is not given within such time period, the Lease shall continue in effect.

2.3 Should Tenant hold possession of the Premises with the consent of Landlord after the expiration of the Lease Term, such holding over shall create a tenancy from month-to-month only, upon the same terms and conditions as are hereinafter set forth, except that the Rent shall be one hundred twenty-five percent (125%) of the Rent being charged at the time of expiration of the Lease Term.

SECTION 3
RENT

3.1 During the Lease Term, Tenant shall pay as monthly rent for the Premises the sum of Six Thousand Seven Hundred and Fifty Dollars ($6,750.00) per month (the "Rent"). The Rent shall be due and payable in advance on the first (1st) day of each month during the Lease Term.

3.2 On the forty-fifth (45^{th}) day of the Lease Term, and thereafter, every ninety (90) days, the Rent shall be adjusted (each, an "Adjustment Date") by the parties, who shall negotiate the adjustment in good faith taking into account net operating income generated by the business conducted by Tenant on the Premises.

3.3 All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at the Building or at such other place as Landlord may from time to time designate in writing.

3.4 If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant hereunder within ten (10) days after written notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to Nevada Revised Statutes 99.040, plus five (5) percentage points (the "Default Rate").

SECTION 4
GAMING

4.1 No slot machines or other gambling game or device shall be permitted on the Premises. Tenant acknowledges that Landlord may conduct gaming operations in the Building and that Landlord shall have the absolute right to terminate this Lease in the event any state or local governmental authority regulating gaming activities orders or requests that Landlord do so.

4.2 Tenant acknowledges that Landlord and its affiliates may apply for gaming licenses and that such licenses would be of vital importance to Landlord's business. In this regard, if Landlord so applies, Tenant agrees to comply with all reasonable requests made by Landlord for information concerning Tenant's background, which may include, without limitation, completion by Tenant of Landlord's standard form of Corporate Background Questionnaire and/or Personal Background Questionnaire, as appropriate. Landlord may immediately terminate this Agreement in the event that (a) Tenant fails to comply with information requests as set forth in the foregoing sentence; or (b) Landlord determines, in its sole discretion, that continued association with Tenant would jeopardize any gaming license held or pursued by Landlord or any of its affiliates.

SECTION 5
POSSESSION AND SURRENDER OF THE PREMISES

5.1 Tenant shall, by entering upon and occupying the Premises, be deemed to have accepted the Premises in their existing condition, and Landlord shall not be liable for any patent defect therein. Landlord warrants only that it has no actual knowledge of any existing defects as of the effective date of this Lease.

5.2 Upon the expiration or sooner termination of the Lease Term, Tenant shall, at its sole cost and expense, within fifteen (15) days after receipt of written notice, remove all personal property and trade fixtures which Tenant has installed or placed on the Premises ("Tenant's Property") from the Premises and repair all damage thereto resulting from such removal, and Tenant shall thereupon surrender the Premises in the same condition as on the Commencement Date, reasonable wear and tear excepted, broom clean. In the event Tenant fails to remove any of Tenant's Property as provided herein, Landlord may, but is not obligated to, at Tenant's expense, remove all of such property not so removed and repair all damage to the Premises resulting from such removal, and Landlord shall have no responsibility to Tenant for any loss or damage to Tenant's Property caused by, or resulting from, such removal or otherwise. In the event any amount due Landlord pursuant to this Lease has not been paid at the expiration or termination of this Lease, Landlord shall have the right to sell or dispose of Tenant's Property as Landlord so chooses as partial satisfaction of the amount past due.

SECTION 6
USE OF PREMISES; EXCLUSIVITY

6.1 The Premises are leased to Tenant solely for the purpose of the operation of an art gallery and museum and a retail shop for sale of catalogues, postcards, replicas, souvenirs and the like, related to the art displayed by Tenant in the Premises. Tenant shall not use or suffer to be used the Premises, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion.

6.2 Tenant acknowledges that Landlord may enter into other leases within the Building and that the products offered or sold hereunder may create a conflict with the products offered or sold by such other lessees. In the event of a controversy between Tenant and Landlord or Tenant and the lessee or operator of any other business in the Building relating to the type or selling price of any product to be sold in or from the Premises, Landlord shall have the sole right to resolve such controversy and such decision shall be binding on all parties involved. In the event that Tenant fails or refuses to abide by the decision of Landlord, such failure or refusal shall be deemed a material breach and event of default.

6.3 Tenant shall not permit or suffer anything to be done, or kept upon the Premises which will obstruct or interfere with the rights of other tenants, Landlord or the patrons and customers or any of them, or which will annoy any of them by reason of unreasonable noise or otherwise, nor will Tenant

commit or permit any nuisance on the Premises or commit or suffer any immoral or illegal act to be committed thereon. Tenant shall not, without Landlord's prior written approval:

6.3.1Distribute or place anywhere on Landlord's property any notice, advertisement or other written solicitation, except upon the Premises;

6.3.2Display on the Premises advertising, brochures, material or posters from any building, casino or entertainment facility other than that of Landlord;

6.3.3Do or permit anything to be done in or about the Premises, which will in any way affect fire or other insurance upon the Building, or any of its contents, or which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy or use of the Premises, or in any way obstruct or interfere with the rights of any other persons in the Building;

6.3.4Operate or permit to be operated on the Premises, any coin or token-operated vending machines or similar devices unless for the sole use of Tenant's employees on the Premises;

6.3.5Use the Premises or any portion thereof as living quarters or sleeping quarters.

6.4 Tenant shall, at all times during the Lease Term, comply with all governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Building, the Premises or Tenant's use thereof.

6.5 Tenant hereby covenants and agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by any and all reasonable rules and regulations as Landlord may, from time to time, adopt for the safety, care and cleanliness of the Premises or the Building.

6.6 Tenant intends to conduct its business in the Premises no less than six (6) hours per day. Tenant may reduce its hours of operation with prior written consent from Landlord, which consent will not be unreasonably withheld. Notwithstanding anything herein to the contrary, Tenant shall have the right to close the Premises for up to thirty (30) days each calendar year for refurbishment of the Premises.

6.7 All of Tenant's signage is subject to Landlord's approval. Tenant understands and agrees that all of its signage must be compatible with the Building's décor. Therefore, and without limiting the generality of the foregoing provisions of this subsection, Tenant agrees that Landlord may limit the size of Tenant's logo on any signage. Additionally, Tenant shall be allowed to attach signage to the exterior of the Premises as permitted by local permitting authorities and as approved by Landlord. Landlord shall cooperate with Tenant in seeking necessary permits or licenses for any such exterior signage.

6.8 Tenant shall not use the name "Desert Inn" or any other name that Landlord shall use to refer to the Building, or its business in the Building, from time to time or any derivation thereof (the "Landlord's Name"), other than "Wynn Resorts" and "Wynn Collection", in connection with, or as part of, Tenant's business, without the prior written consent of Landlord. In the event that Landlord allows Tenant to use the Landlord's Name in advertising, such use shall be deemed a nonexclusive license or privilege only which confers no property rights therein, and such license or privilege may be revoked by Landlord at any time, in which event Tenant shall immediately cease the use of the Landlord's Name. The Landlord's permission to use the Landlord's Name shall not be deemed to abridge the right of Landlord to grant or license the use of the Landlord's Name to any other person at any other time. Tenant shall have no right to use any Landlord owned or licensed trademarks or copyrights without the prior written consent of Landlord. Any rights to use Landlord's owned or licensed trademarks or copyrights on Tenant's merchandise shall be nonexclusive and the subject of a separate agreement.

6.9 Tenant acknowledges that the maintenance of Landlord's and the Building's reputation and the goodwill of all of Landlord's guests and invitees is absolutely essential to Landlord and that any impairment thereof whatsoever will cause great damage to Landlord. Tenant therefore covenants that it

shall operate the Premises in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Landlord and the Building. Tenant shall continuously monitor the performance of each of Tenant's employees at the Premises to insure that such standards are consistently maintained. Tenant further agrees, as a material inducement to Landlord, that repeated failure to maintain such standards or repeated complaints from customers or guests which Landlord after consultation with Tenant determines have a factual basis shall be deemed a material breach of this Lease by Tenant and an event of default.

6.10 Tenant shall not cause or permit its employees to enter upon those areas of the Building which are designated "Employees Only" as the parties acknowledge that for the purpose of this Section 6.10, "Employees" refers to the employees of Landlord and not to the employees of Tenant.

6.11 Tenant shall, in its sole discretion, fix the salary rate and provisions of employee benefits of its employees and shall be responsible for all such salaries, employee benefits, social security taxes, federal and state unemployment insurance and any and all similar taxes relating to its employees and for workers' compensation coverage with respect thereto pursuant to applicable law.

SECTION 7
ALTERATIONS AND IMPROVEMENTS

Tenant shall not make any alterations, improvements or changes ("Improvements") in or to the Premises without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Any Improvements shall be at the sole cost and expense of Tenant. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond, or other security satisfactory to Landlord, to assure diligent and faithful performance of any work to be performed by Tenant. Any Improvements shall be made promptly, in good and workmanlike manner by duly licensed union contractors and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect, pertaining to the Premises or Tenant's use thereof. Except for Tenant's Work, Tenant shall remove all Improvements, at Tenant's sole cost and expense, upon termination of this Lease and to surrender the Premises in the same condition as they were in prior to the making of any or all such Improvements, ordinary wear and tear excepted. Notwithstanding the above, Tenant shall have the right to remove any trade fixtures installed by Tenant upon the Premises.

SECTION 8
PARKING AND COMMON AREAS

Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers and business invitees shall have the non-exclusive right to access and use such common areas of the Building as are designated from time to time by Landlord, subject to such rules and regulations as Landlord may from time to time impose; provided, however, that Tenant shall cause its employees to park in those same areas designated as Employee parking for Employees of Landlord. All common areas which Tenant may be permitted to use are to be used under a revocable license, and if any such license is revoked, or if the amount of such area is diminished, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation or diminution of such areas be deemed constructive or actual eviction. Landlord shall not unreasonably revoke any such license in such a manner as to prevent access to the Premises by Tenant, its employees, invitees and patrons.

SECTION 9
TAXES

9.1 Tenant shall pay its proportionate share of all real property taxes and general and special assessments levied and assessed against the land, the Building and other improvements of which the

Premises are a part. Tenant's proportionate share shall be the ratio of the total real property taxes levied and assessed against the land, the Building and the other improvements of which the Premises are a part, that the Total Square Feet bears to the total number of square feet of the Building within which the Premises are located. Prior to July 1 of each year, Landlord shall notify Tenant of Landlord's calculation of Tenant's proportionate share of the real property taxes. Tenant shall pay its proportionate share of the real property taxes in equal quarterly installments on or before August 1, October 1, January 1 and March 1 of each year. Tenant's proportionate share of the real property taxes shall be apportioned for any partial year of the Lease Term.

9.2 Tenant shall be liable for and shall pay before delinquency (and, upon five (5) days of written demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes, fees and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property or any other personal property of whatsoever kind and to whomsoever belonging situate or installed in or upon the Premises, whether or not affixed to the realty. If at any time during the Lease Term any such taxes on personal property are assessed as part of the tax on the real property of which the Premises is a part, then in such event Tenant shall pay to Landlord the amount of such additional taxes as may be levied against the real property by reason thereof.

9.3 Tenant shall pay when due all taxes, assessments or fees for which Tenant is liable and which arise directly or indirectly from Tenant's operations at the Premises. Within five (5) days of written demand from Landlord, Tenant shall furnish Landlord evidence satisfactory to landlord of the timely payment of any such tax, assessment or fee.

9.4 Whenever Landlord shall receive any statement or bill for any tax, payable in whole or in part by Tenant as additional rent, or shall otherwise be required to make any payment on account thereof, except as otherwise provided herein, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

SECTION 10
UTILITIES

Landlord will bill Tenant for, and Tenant shall pay, Tenant's proportionate share of all services (including, but not limited to, telephone service) and utilities. With respect to those utilities for which the Premises is not separately metered, Tenant's proportionate share shall be based on the ratio the Total Square Feet bears to the total number of square feet of the Building within which the Premises are located.

SECTION 11
MAINTENANCE AND REPAIRS

11.1 Landlord agrees to keep in good order, condition and repair the exterior walls, floor and roof of the Premises, the common areas and the Building, including cleaning, removal of trash, dirt and debris, sweeping and janitorial services, lighting of the Building and service corridors, repair and replacement of sprinkler systems, HVAC and directional signs and other markers, and pest extermination, except for reasonable wear and tear and except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, subtenants or licensees. Landlord acknowledges and agrees that Landlord's security department and security officers are responsible for providing security services in and to the Premises.

11.2 Landlord shall not be obligated to perform any service or to repair or maintain any structure or facility except as provided in this Section 11 and Section 14 of this Lease unless caused by the negligence of Landlord, its agents, customers or contractors. Landlord shall not be obligated to provide any service or maintenance or to make any repairs pursuant to this Lease when such service, maintenance or repair is made necessary because of the negligence or misuse of Tenant, Tenant's agents, employees, servants, contractors, subtenants or licensees. Landlord reserves the right to stop any

service when Landlord reasonably deems such stoppage necessary, whether by reason of accident or emergency, or for repairs or Improvements or otherwise. Landlord shall not be liable under any circumstances for loss or injury however occurring, through or in connection with or incident to any stoppage of such services, provided, however, that rent and other charges hereunder shall be abated during the period that Tenant cannot open for business due to such stoppage. Landlord shall have no responsibility or liability for failure to supply any services or maintenance or to make any repairs when prevented from doing so by any cause beyond Landlord's reasonable control unless caused by the negligence of Landlord, its agents, customers, or contractors. Landlord shall not be obligated to inspect the Premises and shall not be obligated to make any repairs or perform any maintenance hereunder unless first notified of the need thereof in writing by Tenant, or unless actually known to Landlord. Landlord shall not be liable for any loss or damage to persons or property sustained by Tenant or other persons, which may be caused by the Building or the Premises, or any appurtenances thereto, being out of repair or by bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any act or neglect of any tenant or occupant of the Building, or of any other person.

11.3 Except as provided for elsewhere herein, Tenant shall keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Premises and every part thereof and any and all appurtenances thereto wherever located, including, without

limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities within the Premises that exclusively service the Premises, fixtures walls, floors, ceilings, and all interior lighting. Tenant shall also keep and maintain in good order, condition and repair (including any such replacement and restoration as is required for that purpose) any Improvements, special equipment, furnishings, fixtures or facilities installed by it on the Premises. Without limiting the generality of the foregoing, Tenant shall periodically paint and refurbish the interior of Premises as required by Landlord in its reasonable discretion. Tenant shall store all trash and garbage in containers located where designated by Landlord and so as not to be visible or create a nuisance to guests, customers and business invitees of the Building, and so as not to create or permit any health or fire hazard.

SECTION 12
LIENS

12.1 Tenant, at all times, whether by bond or otherwise, shall keep Landlord, the Building, the Premises, the leasehold estate created by this Lease, and any trade fixtures, equipment or personal property within the Premises, free and clear from any claim, lien or encumbrance (other than personal property, consensual security interests for lines of credit or inventory financing in the ordinary course of Tenant's business), tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever.

12.2 Tenant shall give Landlord at least ten (10) business days' prior written notice before the commencement of any work, construction, alteration or repair on the Premises that could be the subject of a mechanics lien to afford Landlord the opportunity to file appropriate notices of non-responsibility.

SECTION 13
INSURANCE

13.1 Landlord and Tenant are covered under the same policies of comprehensive public liability insurance and all-risk, commercial property insurance. Landlord will bill Tenant for, and Tenant shall pay, Tenant's share of such insurance costs.

13.2 If at any time during the Lease Term Tenant ceases to be covered by common insurance with Landlord, Tenant will, at its sole cost and expense, maintain in full force and effect:

(a) a policy of comprehensive public liability insurance issued by an insurance carrier approved by Landlord, insuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Premises or Tenant's use thereof. Landlord shall be named as an additional insured under each such policy of insurance; and

(b) a standard form of all-risk, commercial property insurance with extended coverage insurance covering leasehold improvements, furniture, fixtures and equipment, and personal property located in or on the Premises whether owned by Landlord or Tenant, and the personal property of others in Tenant's possession in, upon or about the Premises. Such insurance shall be in an amount equal to the current replacement value of the property required to be insured. Tenant and Landlord, as their interests may appear, shall be the named insureds under each such policy of insurance.

13.3 A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant under Section 13.2 above, if any, or a copy of each such policy, shall be delivered to Landlord on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance shall be from an insurer and in a form and substance satisfactory to Landlord, shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds prior to the cancellation, diminution in the perils insureds against, or reduction of the amount of coverage of, the particular policy in question. In addition to the foregoing certificates, Tenant shall at all times during the Lease Term maintain (either through common insurance with Landlord or otherwise), at Tenant's sole cost and expense, worker's compensation coverage evidencing coverage at Nevada statutory limits.

13.4 Tenant shall not use or occupy, or permit the Premises to be used or occupied, in a manner that will make void any insurance then in force or increase the rates of fire or any other insurance on the Premises. If by reason of the failure of Tenant to comply with the provisions of this Section, the fire or any other insurance rates of the Premises are increased, Tenant shall reimburse Landlord, as additional rent, on the first day of the calendar month next succeeding notice by Landlord to Tenant of said increase, for that part of all insurance premiums thereafter paid by Landlord which shall have been charged because of such failure of Tenant.

13.5 Tenant hereby waives any and all rights of recovery from Landlord, its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) that are caused by or result from risks insured against under any form of insurance policy required to be maintained by Tenant hereunder.

13.6 Each policy of insurance provided for in this Section 13 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against the other party, its officers, directors, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Notwithstanding any other provision contained in this Section 13 or elsewhere in this Lease, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord from becoming a co-insurer. The limits of the public liability insurance required to be maintained by Tenant under this Lease shall in no way limit or diminish Tenant's liability under Section 15 hereof and such limits shall be subject to increase at any time and from time to time during the Lease Term if Landlord, in the exercise of reasonable discretion, deems such an increase necessary for its adequate

protection; provided, however, Landlord may not exercise its right under this sentence more frequently than one time every two years during the Lease Term.

13.7 Landlord shall maintain insurance covering the Premises (and all improvements therein or additions thereto other than those items which Tenant is required to insure, Tenant's improvements, fixtures and stock in trade) and the Building against loss or damage by fire or casualty in amounts not less than the replacement value thereof, from financially responsible insurers and in amounts as determined in Landlord's reasonable discretion provided such amounts are

customary for the industry. Tenant shall be solely responsible for insuring art works displayed or stored in its gallery or storage areas, at Tenant's sole expense. In no event shall Landlord be responsible for insuring any such art works.

13.8 Landlord shall maintain public liability insurance on an occurrence basis in amounts that are customary for the industry insuring against all claims, demands, or actions for personal injury or death, or damage to property, made by or on behalf of any person, firm or corporation, while in the Building, or arising from the conduct and operation of the common areas or arising from any acts or omissions of Landlord or any of Landlord's agents, employees or contractors.

SECTION 14
DESTRUCTION OF PREMISES; CONDEMNATION

14.1 In the case of the total destruction of the Premises, or any portion thereof or of the Building substantially interfering with Tenant's use of the Premises not caused by the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees or customers ("Destruction"), this Lease shall terminate except as herein provided. If Landlord notifies Tenant in writing within forty-five (45) days of such Destruction of Landlord's election to repair said damage to the Premises, and if Landlord proceeds to and does repair such damage with reasonable dispatch, the Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the Rent in an amount equal to that proportion of the Rent which the number of square feet of floor space in the unusable portion of the Premises bears to the Total Square Feet, and provided further that if such portion of the Premises is damaged or destroyed such that the remainder will not be suitable for the purpose for which Tenant has leased the Premises, Tenant may close for business until such time as Landlord has repaired such damage and rent and all other charges hereunder shall be suspended until such time is able to reopen for business. Said reduction shall be prorated so that the Rent shall only be reduced for those days any given area as actually unusable. If this Lease is terminated pursuant to this Section 14, and if Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant, and all rights and obligations hereunder shall cease and terminate.

14.2 The provisions of this Section 14 with respect to repair by Landlord shall be limited to such repair as is necessary to place the Premises in the condition they were in immediately prior to the Destruction and when placed in such condition, the Premises shall be deemed restored and rendered tenantable. Tenant shall replace its own art works, stock in trade, furniture, furnishings, floor coverings, decor, equipment and trade fixtures at its own expense.

14.3 Notwithstanding the foregoing provisions, in the event the Premises or any portion thereof shall be damaged by fire or other casualty due to the fault, negligence or willful misconduct of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then this Lease shall not terminate, the damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any Rent.

14.4 All insurance proceeds payable under any fire and extended coverage risk insurance covering the Premises and maintained by Landlord shall be payable to Landlord in the event of Destruction, and Tenant shall have no interest therein, except to the extent of such insurance separately carried by

Tenant. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 14, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any Destruction.

14.5 Should the whole of the Premises be condemned or taken by a competent authority for any public or quasi-public purpose, then this Lease shall terminate upon such taking. If such portion of the Premises is condemned or taken such that the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking a portion of the Premises is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue in full force and effect, but the rent and all other charges hereunder shall be reduced in an amount equal to that proportion of such charges which the floor space of the portion taken bears to the total floor space of the Leased Property, and rent and other charges shall be suspended during any period of time that Tenant is closed for business. In the event a partial taking does not terminate this Lease, Landlord, at Landlord's expense, shall repair the damage to the Premises with reasonable dispatch and restore it as nearly as reasonably possible to its condition as immediately before the taking. If any part of the Building other than the Premises shall be taken or appropriated so as to materially and adversely affect the ability of Tenant's customers to reach the Premises, either party shall have the right, at its option to terminate this Lease by notifying the other party within twenty (20) days of such taking.

14.6 For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking.

SECTION 15
INDEMNIFICATION

15.1 Each party ("Indemnitor") hereby covenants and agrees to indemnify, defend, save and hold the other party ("Indemnitee"), the Premises and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, costs, expenses (including attorneys' fees), judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission, or negligence of Indemnitor, its agents, employees, servants, contractors, subtenants or licensees while in, upon, about, or in any way connected with, the Premises or the Building or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Premises or any portion thereof other than as a result of the intentional or negligent acts of Indemnitee.

15.2 In the absence of intentional or grossly negligent acts of Landlord, Landlord shall not be liable to Tenant, or to any other person whatsoever, for any damage occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system or by the bursting, running or leaking of any tank, washstand, closet or waste of other pipes, nor for any damages occasioned by water being upon or coming upon the Premises or for any damage arising from any acts or neglect of co-tenants or other occupants of the Building or of adjacent property or of the public, nor shall Landlord be liable in damage or otherwise for any failure to furnish, or interruption of, service of any utility beyond the control of Landlord.

SECTION 16
SUBORDINATION

Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof now or hereafter placed, charged or enforced against the Premises, or any portion thereof, and to execute and deliver at any time, and from time to time, upon demand by Landlord,

such documents as may be reasonably required to effectuate such subordination within ten (10) days after receiving such documents, provided that in connection with such subordination agreement Landlord's lender agrees to provide a reasonable non-disturbance agreement for the benefit of Tenant.

SECTION 17
ASSIGNMENT AND SUBLETTING

17.1 Except as otherwise set forth herein, Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, or sublet the Premises or any portion thereof, or license the use of all or any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Tenant shall have the right, upon giving notice to Landlord, to assign to an Affiliate of Tenant so long as Tenant remains as guarantor and liable for all payments due pursuant to this Lease. For purposes of this Lease, an "Affiliate" of a party shall mean any person or entity (a) that is owned or controlled by the party, (b) that owns or controls the party, (c) that is owned or controlled by a person or entity that owns or controls the party, (d) that owns or controls an Affiliate of the party, or (e) that is owned or controlled by an Affiliate of the party. As used in this definition, the words "owns" or "owned" refer to the ownership of twenty percent (20%) or more of the equity interest in the person or entity so owned, regardless of the manner of ownership. Also, as used in this definition, ownership or control may be direct or indirect. The restriction or limitation on use of the Premises shall continue to apply to any subtenant or assignee hereunder. Any consent by Landlord to any act requiring consent pursuant to this Section 17.1 shall not constitute a waiver of the necessity for such consent to any subsequent act. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section 17.1.

17.2 Landlord may reasonably require that each proposed assignee or sublessee agree, in a written agreement satisfactory to Landlord, to assume and abide by all the terms and provisions of this Lease, including those which govern the permitted uses of the Premises.

17.3 In the absence of an express agreement in writing to the contrary executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

SECTION 18
INSOLVENCY AND DEATH

It is understood and agreed that neither this Lease nor any interest herein or hereunder, nor any estate hereby created in favor of Tenant, shall pass by operation of law under any state of federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heirs, legatees, devisees, or any other person whomsoever without the prior written consent of Landlord.

SECTION 19
RECORDS AND BOOKS OF ACCOUNT

19.1 Tenant and any other person, firm or corporation selling merchandise or services in, upon or from the Premises or any part thereof shall keep and maintain complete, accurate and customary records and books of account of all sales and all business transactions made in, upon or from the Premises and the same shall be retained intact for a period of not less than three (3) years after the end of the fiscal year to which said records and books of account pertain. Landlord shall be entitled at all reasonable times during business hours, through Landlord's duly authorized agents, attorneys, or accountants, to inspect and make copies of any and all such records and books of account.

SECTION 20
RIGHT OF ACCESS

Landlord and its authorized agents and representatives shall be entitled to enter the Premises immediately in the case of an emergency or with reasonable notice for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem necessary or appropriate; for the purpose of inspecting the Premises; for the purpose of exhibiting the Premises to prospective purchasers or lessees; and for the purpose of making repairs to the Premises or the Building and performing any work upon the Premises which Landlord may elect or be required to make.

SECTION 21
ESTOPPEL CERTIFICATE

Tenant agrees that within ten (10) business days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord a certificate stating that this Lease is in full force and effect without amendment, or if amended attaching a copy thereof to the certificate, the date to which all rentals have been paid, any defaults or offsets claimed by Tenant and such other information concerning the Lease, the Premises or Tenant as Landlord may request. Landlord will provide a similar document to Tenant upon request by Tenant within ten (10) business days after request.

SECTION 22
EXPENDITURES BY LANDLORD

Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be twenty (20) days unless provided for specifically herein), Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing,

or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate, shall constitute and be collectable as additional rent on demand.

SECTION 23
DEFAULT

23.1 Tenant shall be in default of this Lease if:

23.1.1Tenant shall fail to make timely and full payment of any sum of money required to be paid hereunder and such failure continues for ten (10) days after written notice thereof from Landlord;

23.1.2Tenant shall fail to perform any other term, covenant or condition of Tenant contained in this Lease, and such failure continues for twenty (20) days after written notice thereof from Landlord; provided, however, that if correction is impossible to correct within twenty (20) days Tenant shall not be deemed in default if Tenant commences correction within said twenty (20) day period, and diligently pursues such correction to completion;

23.1.3Tenant should vacate or abandon the Premises or cease operations during the Lease Term;

23.1.4There is filed any petition in bankruptcy or Tenant is adjudicated a bankrupt or insolvent, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or any action is taken by or against Tenant under any state of federal insolvency or bankruptcy act, or any similar law now or hereafter in effect; or

23.1.5Notwithstanding anything to the contrary contained above, if Tenant shall breach any covenant hereof, or do or permit, or omit to do, any act or thing, which results in a nuisance or an offensive or illegal condition, or which causes or threatens serious damage or injury to life, limb or property, or in the event of a breach of Sections 13.1, 13.2 or 17.1, then and in any such event, Tenant shall be automatically in default of this Lease, without any requirement of notice from Landlord, unless Landlord waives such default, in writing, in Landlord's sole discretion.

23.2 In the event of a default, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

23.2.1The right to declare the Lease Term ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Tenant in and to the Premises;

23.2.2The right, without declaring the Lease Term ended, to re-enter the Premises and to occupy and/or relet the same, or any portion thereof, for and on account of Tenant, applying any monies received first to the payments of such reasonable expenses as Landlord may have incurred in recovering possession of the Premises, including, without limitation, costs and attorneys' fees, and then to the fulfillment of the covenants of Tenant. Landlord may enter into any lease concerning the Premises either in Landlord's name or in the name of Tenant without expanding Tenant's obligations hereunder, or assume Tenant's interest in and to any existing subleases of the Premises, as Landlord may see fit, and Tenant shall have no right whatsoever to collect any rent from such tenants or subtenants. In any case, Tenant, until the end of what would have been the Lease Term, shall remain liable to Landlord for the Rent hereunder, less the net proceeds for said month, if any, of any reletting, after deducting all of Landlord's expenses in connection with such reletting, together with interest thereon at the rate of twelve percent (12%) per annum, compounded monthly, until paid. Landlord reserves the right to bring such actions for the recovery of any deficits remaining unpaid by Tenant to Landlord hereunder as Landlord may deem advisable from time to time without being obligated to await the end of the Lease Term or a final determination of Tenant's account and the commencement or maintenance of one or more actions by Landlord in this connection shall not bar Landlord from bringing any subsequent actions for further accruals pursuant hereto; or

23.2.3The right, even though it may have relet all or any portion thereof of the Premises, to thereafter at any time terminate this Lease, and to terminate all of the rights of Tenant in and to the Premises. Landlord can terminate Tenant's right to possession of the Premises at any time. On termination, Landlord has the right to recover from Tenant:

(a) The worth, at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease;

(b) The worth, at the time of the award of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

(c) The worth, at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

(d) Any other reasonable amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

23.2.4Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (i) remove all persons from the Premises, (ii) remove all property therefrom, and (iii) enforce any rights Landlord may have against said property or store the same in any warehouse or elsewhere at the

cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, except for damage caused by the willful misconduct or gross negligence of Landlord, its agents or subcontractors.

23.2.5Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money accruing hereunder, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain

possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

23.3 In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its reasonable costs and legal expenses, including reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

23.4 The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder.

SECTION 24
MISCELLANEOUS

24.1 Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from Landlord or from any other person claiming through Landlord, except as expressly provided otherwise in this Lease.

24.2 In the event of any sale or exchange of the Premises by Landlord, Landlord shall-be, and is, hereby relieved of all liability under and all of its covenants and obligations contained in or derived from this Lease. Tenant agrees to attorn to such purchaser or transferee, provided that such purchaser or transferee agrees to be bound as Landlord under all of the terms and conditions of this Lease. Any sale of the Building or the Premises by Landlord shall be subject to this Lease.

24.3 It is agreed that in the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of thus Lease, Tenant, prior to exercising any right or remedy Tenant may have against Landlord, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within twenty (20) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within that twenty (20) day period, then such default shall be deemed to be rectified or cured if Landlord within that twenty (20) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

24.4 Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

24.5 Any and all notices and demands required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally

recognized overnight courier service, or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

If to Landlord:
Valvino Lamore, LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Legal Department
Telephone: 702-733-4444
Facsimile: 702-791-0167

If to Tenant:
Wynn Resorts, LLC
3145 Las Vegas Boulevard South
Attention: Legal Department
Telephone: 702-733-4556
Facsimile: 702-733-4596

Either party may change its address for the purpose of receiving notices by providing written notice to the other.

24.6 The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

24.7 The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted in Section 17 hereof.

24.8 If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.9 Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

24.10This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

24.11Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.12The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

24.13The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof.

24.14In the event Tenant now or hereafter shall consist of more than one person, firm, corporation or trust, then and in such event, all such persons, firms, corporations or trusts shall be jointly and severally liable as Tenant hereunder.

24.15This Lease may not be recorded without Landlord's prior written consent. If Tenant records this Lease without said consent, Tenant shall be in default hereof. Upon request by Tenant, Landlord and Tenant shall execute, and Landlord shall cause to be recorded, a memorandum of this Lease in form and substance mutually agreeable to the parties; provided, however, that a memorandum of

termination of Lease in form and substance mutually agreeable to the parties shall also be executed by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

24.16All necessary actions have been taken under the parties' organizational documents to authorize the individuals signing this Lease on behalf of the respective parties to do so.

24.17The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

24.18Landlord and Tenant each represent and warrant to the other that they have not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with thus transaction. Landlord and Tenant each agree to indemnify, defend, save and hold the other harmless from and against all loss, cost and expense incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligation shall survive any termination of the Lease.

24.19Landlord and Tenant agree to maintain the confidentiality of all terms and provisions of this Lease, as well as all discussions and negotiations relating to any of the foregoing and any and all documents, data or other information that may be generated in relation thereto, except that each party hereto may disclose the foregoing described information in connection with obtaining legal or financial advice from such party's attorneys, accountants or financial advisors, or pursuant to due diligence conducted in connection with the obtaining of financing by either party hereto (including, without limitation, delivery of estoppel certificates), provided that any recipient of such information is notified of its confidential nature. The foregoing obligations apply to all principals, directors, officers, employees, agents and representatives of the undersigned parties, except that such obligations do not apply to the extent that such information is (i) required to be disclosed by applicable law, or (ii) was already in the possession of the receiving party, or (iii) becomes generally available to the public other than as a result of disclosure by either of the undersigned or their respective representatives, or (iv) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party, or (v) is furnished to third parties who execute a confidentiality agreement concerning the information furnished.

24.20This Lease may be executed in one or more counterparts, all of which executed counterparts shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above-written.

"Landlord"

Valvino Lamore, LLC
a Nevada limited liability company

By: /S/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Managing Member

"Tenant"

Wynn Resorts, LLC
a Nevada limited liability company

By: Valvino Lamore, LLC, its Member

By: /S/ STEPHEN A. WYNN

Name: Stephen A. Wynn

Title: Managing Member

EXHIBIT "A"

QuickLinks

Exhibit 10.9

ART RENTAL AND LICENSING AGREEMENT

This Art Rental and Licensing Agreement ("**Agreement**"), is entered into this 1st day of November, 2001, by and between STEPHEN A. WYNN ("**Lessor**") and WYNN RESORTS, LLC ("**Lessee**").

RECITALS

A. Lessor is the owner of the paintings and other art works identified in *Exhibit A* attached hereto and incorporated herein by this reference (collectively, the "**Works**").

B. Lessor wishes to lease to Lessee, and Lessee wishes to lease from Lessor, the Works, in order to publicly display the Works in a gallery located at a site in Las Vegas, Nevada, at which Lessee is currently developing a resort hotel (the "**Gallery**").

C. By publicly displaying the Works, Lessor and Lessee desire to promote the Works and to enhance the cultural and educational opportunities for Nevada residents and visitors.

Based upon the foregoing and the following terms and conditions, the parties hereto agree as follows:

1. *Rental.* Upon the terms and subject to the conditions of this Agreement, Lessor hereby grants to Lessee a continuing right to publicly display the Works, and Lessee hereby accepts from Lessor the rental of the works. The location of the Gallery and the installation layout and plan for the Works shall be subject to Lessor's prior approval.

2. *Compliance with Law.* Lessee agrees to maintain the Works on public display, make the Gallery available for student tours, and take such other actions as may be necessary or appropriate for meeting the requirements of N.R.S. 361.068, 361.186, 374.291, 374.2911, and agrees to comply with N.R.S. 597.720, *et seq*., and other applicable law.

3. *Exhibition and Promotion.* Lessee agrees (i) to exhibit the Works under the title "The Wynn Collection" or such other title as may be approved by Lessor, (ii) to transport, handle, care for, and display the Works in a manner consistent with the world-class quality of the Works, (iii) to maintain the Gallery as a first-class facility, and (iv) to promote the Works through "Openings," "Receptions," and public events.

4. *Merchandising.* To the extent, if any, that he possesses the required rights, Lessor hereby authorizes Lessee to develop, manufacture (by subcontract or otherwise), and sell such merchandising and promotional items based upon the Works as Lessee may determine in its best business judgment. To the extent, if any, that he possesses any such rights in any Work, Lessor hereby grants to Lessee a nonexclusive license for such purposes for the period of the rental of such Work hereunder. In the event that any Work is withdrawn or rental terminated, the corresponding license shall automatically terminate; provided, however, that following such termination, Lessee shall have six (6) months to discontinue sales and use of the applicable merchandise. The merchandise and promotional items based on the Works may include, but are not limited to, educational catalogues, educational works (including audiovisual and audio recordings), fine art reproductions, and retail merchandise based upon the Works. Lessee shall be solely responsible for clearing and/or obtaining such rights, for obtaining all required permissions, and taking all reasonable steps necessary to obtain intellectual property protection for said items based on the Works, all of which shall, with respect to any Work, inure to the benefit of Lessee during the rental of such Work hereunder and to the benefit of Lessor thereafter. Notwithstanding any other provision of this Agreement (including without limitation this Section 4 and Section 11 below), Lessor does not make (and hereby disclaims) any and all representations and/or warranties to Lessee or otherwise in respect of the Works or any rights in the Works, including but not limited to title, quiet enjoyment, authenticity, copyright, or moral rights. Lessor shall not have any liability to Lessee in respect of any, and Lessee hereby expressly and to the full extent permitted

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by law waives as against Lessor all, claims, damages, expenses, fees, or losses that may be incurred by or threatened against Lessee as a result of the Works being leased to Lessee, in the possession of Lessee during the term hereof, displayed at the Gallery and/or reproduced (by, on behalf of, or with the consent of Lessee) in merchandising, promotional, or other items relating to the Works.

5. *Rental Fees.* Lessee agrees to pay to Lessor a monthly rental in the amounts and at the times set forth in *Exhibit B* attached hereto and incorporated herein by this reference.

6. *Additions, Withdrawals, and Termination.* Lessor and Lessee may, by mutual agreement, add other art works from time to time to the Works covered by this Agreement. Lessor shall have the right to withdraw any or all Works from this Agreement and terminate the rental of such Work(s) hereunder on fifteen (15) days' written notice to Lessee; provided, however, that with respect to the Works identified as long-term rentals in *Exhibit C* attached hereto and incorporated herein by this reference, no such notice may be given before November 1, 2002. Lessee shall have the right to return any or all Works covered by this Agreement and terminate the rental of such Work(s) hereunder on thirty (30) days' written notice to Lessor; provided, however, that with respect to the Works identified as long-term rentals in *Exhibit C*, no such notice may be given before November 1, 2002. Upon termination of the rental of any Work hereunder, Lessee shall have no further right or license with respect to such Work, except to the extent that, under Section 4 and Section 11, Lessee is specifically provided with a six-month period to discontinue sales and use of merchandise. Notwithstanding the foregoing, and without prejudice to any other rights or remedies that Lessor may have, Lessor may terminate the rental of all Works hereunder immediately by delivery of notice to Lessee at any time if any of the following events occurs: (i) Lessor ceases to be the Managing Member of Valvino Lamore, LLC, a Nevada limited liability company ("**Valvino**"); (ii) Valvino, Lessee, or any of Valvino's other subsidiary companies makes an assignment for the benefit of creditors, is adjudicated bankrupt, files a voluntary petition or answer seeking any relief under bankruptcy or insolvency laws, has filed against it an involuntary petition under such laws, or applies for or permits the appointment of a receiver or trustee for all or a substantial portion of its assets; or (iii) Lessee defaults under any material provision of this Agreement and fails to cure such default within seven (7) days after it receives written notice of such default from Lessor unless such default relates to the care, custody, or protection of any of the Works, in which event such default shall be

cured immediately upon notice from Lessor. Upon termination of the rental of all Works hereunder, this Agreement shall terminate; provided, however, that the termination of this Agreement shall not affect the obligations of the parties under Sections 5, 7, 9, 10, or any other provision that can be fulfilled only after the termination date.

7. *Insurance.* Lessee shall reimburse Lessor for the actual cost of insuring the Works on a "wall-to-wall" basis, for the full rental period hereunder (including packing and shipping), for the value of the Works as stipulated in writing by Lessor, less the costs of insurance for the dates the Works are not on display or in transit to or from the Gallery. Upon reasonable prior notice to Lessee, Lessor shall have the right from time to time to reasonably increase the stated value of any one or more of the Works, and require Lessee to increase the reimbursement required by this Section 7. Lessee shall be named as an additional insured on Lessor's insurance policy. A certificate of insurance and a copy of those portions of the insurance policy covering the Works and setting forth any exclusions to coverage shall be furnished by Lessor to Lessee, and shall be subject to Lessor's reasonable approval as to form and content (including any deductible). The foregoing insurance policy shall include coverage against all risk of physical loss or damage from any external cause while in transit and on location in the Gallery during the rental period hereunder. Lessee shall bear sole responsibility and shall be liable to Lessor for all loss, damage, or destruction of the Works and any of them during the rental period hereunder (including loss, damage, or destruction incurred during packing or crating or while in transit), regardless of any

exceptions, exclusions, or limitations to its insurance policy covering the Works, regardless of fault or the degree of care exercised by Lessee, and regardless of the presence or supervision of, or any direction or approval by, Lessor or any Lessor's representative; provided, however, that Lessee's liability in the event of such loss, damage, or destruction shall not exceed the value of the Works as stipulated in writing by Lessor. Lessee shall be responsible to pay any and all deductibles relating to the insurance coverage required by this Section 7. In the event any Work is lost or stolen, and then recovered after Lessor has been reimbursed by its insurance, Lessor shall have the option to exchange those insurance proceeds for such Work. In the event any Work is damaged but not destroyed, Lessee agrees to be responsible for both the cost of repairing and restoring such Work and the loss in value of such Work as determined by an appraiser mutually agreed upon by the parties.

8. *Security.* Lessee agrees to take all reasonable steps necessary to secure and protect the Works from loss, theft or injury and to treat them in a manner consistent with maintaining its own most valuable assets at all times the Works are in its possession, control or custody, or in transit to or from Lessor. Without limiting the generality of the foregoing, Lessee shall provide for an adequate number of guards to be on duty in and around the Gallery at all times while the Works are in the Gallery. All Works shall be within direct sight lines of the guards or under direct video surveillance at all times during the rental period hereunder. Lessee shall comply with further reasonable security restrictions and arrangements as directed in writing by Lessor. Lessee represents and warrants to Lessor that the Gallery is equipped with adequate fire detection/prevention systems and protected by alarm systems that are activated at all times.

9. *Indemnification.* Lessee agrees to and does indemnify, defend, protect, and hold harmless Lessor, his agents, heirs, assigns, and successors (collectively, "**Indemnitees**") from and against any and all claims, damages, liabilities, losses, actions, complaints, or judgments, including attorneys' fees, threatened against, incurred, or suffered by the Indemnitees, arising out of Lessee's breach of or failure to perform, under this Agreement, the inaccuracy when made of any representation or warranty made by Lessee, or any act or omission by or on behalf of Lessee or its respective agents, employees, contractors, or representatives, relating to the Works or this Agreement.

10. *Taxes.* Lessee shall pay all of the following Nevada state and local taxes, along with all interest, penalties, and other additions related thereto: (i) sales and use taxes applicable to the rental of the Works pursuant hereto; and (ii) except to the extent provided otherwise in the following sentence, personal property taxes applicable to each of the Works for each fiscal year during which Lessee is renting such Work hereunder and, if such Work was purchased no earlier than two years before the opening of the Gallery, for each of the two full fiscal years immediately preceding the opening of the Gallery. In the event that Lessor withdraws any Work from this Agreement and terminates the rental of such Work hereunder pursuant to the first sentence of Section 6, Lessor and Lessee shall make an equitable allocation of the personal property taxes applicable to such Work for the fiscal year in which such withdrawal occurs.

11. *Intellectual Properties.* Lessor consents to the photography, filming, videotaping and recordation of the Works for the purpose of obtaining photographic and other copyrights in the new derivative works, which shall be owned and controlled by Lessor, but which is hereby licensed to Lessee for use in advertising, promotion, and merchandising of, and education relating to, the Works, such license to run concurrently, with respect to any Work, with the rental of such Work hereunder. In the event that any Work is withdrawn or rental terminated, the corresponding license shall automatically terminate; provided, however, that following such termination, Lessee shall have six (6) months to discontinue sales and use of the applicable merchandise.

12. *Notice.* Any notice to be given pursuant to this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage

prepaid, with return receipt requested, or facsimile. Notice by mail shall be sent concurrently with any facsimile notice. Notices shall be addressed to the parties at the address specified below, but each party may change such party's address by written notice in accordance with this Section 12. Notices delivered personally shall be deemed communicated as of actual receipt; facsimile notices (with a concurrent mailing) shall be deemed communicated three (3) days after mailing. Notices shall be made as follows:

Wynn Resorts, LLC Legal Department 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Telephone: 702-733-4556 Fax: 702-733-4596	Mr. Stephen A. Wynn One Shadow Creek Drive North Las Vegas, Nevada 89031 Telephone: 702-733-4123 Fax: 702-791-0167

13. *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement between the parties and supersedes any oral or written communications between representatives of Lessor and Lessee, with respect to its subject matter. This Agreement may be amended only if such

amendment is set forth in writing and executed by each of the parties.

14. *Governing Law.* This Agreement shall in all respects be construed according to the laws of the State of Nevada, regardless of the choice or conflict of laws provisions of Nevada or any other jurisdiction.

15. *Assignment; Binding Effect.* Lessor may assign any or all of his rights and obligations under this Agreement. Lessee may not assign all or any portion of its rights or obligations under this Agreement. Subject to the preceding, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement does not create, and shall not be construed or deemed to create, any rights or benefits enforceable by or for the benefit of any person or entity other than the parties hereto and their respective heirs, legal representatives, successors, and assigns.

16. *Headings; Context.* All headings herein are inserted only for convenience and ease of reference and shall not be considered in the construction or interpretation of any provision of this Agreement. Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and the neuter gender shall include the male and female as well as an entity, all as the context and meaning of this Agreement may require.

17. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

WYNN RESORTS, LLC

/s/ STEPHEN A. WYNN	/s/ MARC SCHORR
Stephen A. Wynn	Marc Schorr *Chief Operating Officer*

EXHIBIT A

WORKS OF ART

Artist:	Paul Cézanne
Title:	Curtain, Jug and Fruit Bowl (Rideau, Cruchon et Compotier)
Date:	c. 1893-94
Medium:	Oil on canvas
Size:	$23\frac{1}{2} \times 28\frac{3}{4}$ inches

Artist:	Paul Gauguin
Title:	Bathers (Promenade au bord de la mer) (Famille Tahitienne)
Date:	1902
Medium:	Oil on canvas
Size:	$36\frac{1}{4} \times 28\frac{3}{4}$ in. (92 cm. × 73 cm.)

Artist:	Édouard Manet
Title:	Portrait of Mademoiselle Suzette Lemaire, In Profile (Portrait de Mademoiselle Suzette Lemaire, de profil)
Date:	1880
Medium:	Pastel on paper
Size:	$21\frac{3}{8} \times 17\frac{3}{4}$ in. (54.3 × 45.1 cm.)

Artist:	Édouard Manet
Title:	Self Portrait
Date:	c. 1878-1879
Medium:	Oil on canvas
Size:	$33\frac{5}{8} \times 28$ inches

Artist:	Henri Matisse
Title:	La Robe Persane
Date:	1940
Medium:	Oil on canvas
Size:	$32 \times 25\frac{5}{8}$ in. (81 × 65 cm.)

Artist:	Henri Matisse
Title:	Pineapple and Anemones
Date:	1940
Medium:	Oil on canvas
Size:	$28\frac{3}{4} \times 36\frac{1}{4}$ in. (73 × 92 cm.)

Artist:	Amedeo Modigliani
Title:	Nu Couche (sur le cote gauche)
Date:	1917

Medium:	Oil on canvas
Size:	35 × 57 in. (88.9 × 144.8 cm)

Artist:	Pablo Picasso
Title:	Le Reve
Date:	1932
Medium:	Oil on canvas
Size:	$51\frac{1}{8} \times 38\frac{1}{8}$ in. (129.8 × 97.2 cm)

Artist:	Vincent van Gogh
Title:	Portrait of a Peasant Girl in a Straw Hat
Date:	June 1890
Medium:	Oil on canvas
Size:	$36\frac{1}{4} \times 28\frac{3}{4}$ in. (92 × 73 cm.)

Artist:	Andrew Warhol
Title:	Steve Wynn
Date:	1983
Medium:	Synthetic polymer paint, silkscreen ink and diamond dust on canvas
Size:	40 × 40 in.

Artist:	Claude Monet
Title:	Camille a l'Ombrelle Verte
Date:	1876
Medium:	Oil on Canvas
Size:	$31\frac{7}{8} \times 23\frac{5}{8}$ in.

A framed photograph of Pablo Picasso that is owned by Steve Wynn will also be included in the gallery. It is approx. 24 × 30 in.

EXHIBIT B

RENTAL FEES

No rental fee shall be due hereunder for the period from the effective date of this Agreement to April 30, 2002 (the "**Abatement Period**"). For each calendar month beginning after the Abatement Period, Lessee shall within fifteen (15) days after the end of such month (including any partial month in which the term hereof ends) pay to Lessor the lesser of (i) One Million Dollars ($1,000,000.00) or (ii) all Adjusted Gross Proceeds (as hereinafter defined) for such month (or partial month as the case may be), and furnish to Lessor a written statement explaining the calculation of such Adjusted Gross Proceeds. The foregoing statement from Lessee shall be in form and style, and contain such detail, as Lessor may reasonably require. Lessee agrees to keep accurate books and records of all business activities conducted at or relating to the Gallery. Upon prior reasonable notice and at reasonable times, Lessor or his representatives shall have the right to inspect and copy such books and records for the purpose of auditing or verifying such business activities and monthly statements.

For purposes hereof, "Adjusted Gross Proceeds" means (i) all gross revenues received by the Gallery, including without limitation admission fees, fees for electronic touring devices, and merchandise sales revenues, less (ii) all out-of-pocket expenses paid by the Gallery in connection with the exhibition and promotion of the Works, including without limitation payroll for Gallery staff and security, advertising and printing costs, the cost of "Openings" and "Receptions," fine art transportation and insurance costs, the cost of goods sold, and Nevada state and local sales and use taxes and personal property taxes. Notwithstanding anything herein expressed or implied to the contrary, for purposes of calculating Adjusted Gross Proceeds, such out-of-pocket expenses shall not include: (i) indirect or overhead expenses of Valvino, Lessee, or any of Valvino's other subsidiary companies (such as real property rental costs and general and administrative expense allocations); (ii) any liability under any indemnity by Lessee; (iii) any costs or expenses associated with any damage to or loss of any of the Works; (iv) any costs or expenses associated with any breach, default, or failure to perform by Lessee relating to this Agreement; or (v) any capital expenditures or depreciation.

EXHIBIT C

LONG-TERM RENTALS

Artist	Title
Amedeo Modigliani	*Nu Couche (sur le cote gauche)*
Paul Gauguin	*Bathers*

QuickLinks

Exhibit 10.10

STOCKHOLDERS AGREEMENT

This STOCKHOLDERS AGREEMENT (the **"Agreement"**), dated as of this 11th day of April, 2002, is entered into by and among Stephen A. Wynn (**"Wynn"**), an individual, Baron Asset Fund (**"Baron"**), a Massachusetts business trust and Aruze USA, Inc., a Nevada corporation (**"Aruze"**).

W I T N E S S E T H:

WHEREAS, the Stockholders (as defined in Section 1) are members of Valvino Lamore, LLC, a Nevada limited liability company (the **"LLC"**);

WHEREAS, the Stockholders have agreed to alter the organizational form of the LLC or form a successor entity to the LLC, and have agreed to do so by forming, either through the contribution of their interests in the LLC or through a different technique, a corporation (**"NewCo"**); and

WHEREAS, as a condition to their willingness to form NewCo, either through the contribution of their interests in the LLC or through a different technique, the Stockholders are willing to agree to the matters set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below, the parties hereto agree as follows:

1. *Definitions.* For purposes of this Agreement:

(a) "Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

(b) "Aruze Parent" means Aruze Corp., a Japanese public corporation, of which Kazuo Okada is President and, together with his family members, an eighty percent shareholder.

(c) "Aruze/Wynn Group" means Aruze, Wynn, and any Stockholder who is a direct or indirect transferee of either Aruze or Wynn.

(d) "BAMCO" means BAMCO, Inc., a New York corporation. Without limiting the generality of the definition of Specified Affiliate, BAMCO shall be treated as a Specified Affiliate of Baron.

(e) "Bankruptcy" means, and a Stockholder shall be referred to as a "Bankrupt Stockholder" upon, (a) the entry of a decree or order for relief against such Stockholder, by a court of competent jurisdiction in any voluntary or involuntary case brought against the Stockholder under any bankruptcy, insolvency or similar law (collectively, **"Debtor Relief Laws"**) generally affecting the rights of creditors and relief of debtors now or hereafter in effect; (b) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for such Stockholder or for any substantial part of such Stockholder's assets or property; (c) the ordering of the winding up or liquidation of such Stockholder's affairs; (d) the filing of a voluntary petition in bankruptcy by such Stockholder or the filing of an involuntary petition against such Stockholder, which petition is not dismissed within a period of 180 days; (e) the consent by such Stockholder to the entry of an order for relief in a voluntary or involuntary case under any Debtor Relief Laws or to the appointment of, or the taking of any possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent under any applicable Debtor Relief Laws for such Stockholder or for any substantial part of such Stockholder's assets or property; or (f) the making by such Stockholder of any general assignment for the benefit of such Stockholder's creditors.

(f) "Beneficially Own" or "Beneficial Ownership" with respect to any securities shall mean having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the **"Exchange Act"**)) including pursuant to any agreement, arrangement or understanding, whether or not in writing. Without duplicative counting of the same securities by the same holder, securities Beneficially Owned by a Person shall include securities Beneficially Owned by all other Persons who together with such Person would constitute a "group" within the meaning of Section 13(d)(3) of the Exchange Act.

(g) "Designated Stockholders" means Wynn and Aruze and Permitted Transferees of any such Person and their Permitted Transferees.

(h) "Fair Market Value" means, with respect to each Share of any class or series for any day, (i) the last reported sale price on such day or, in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, on the principal national securities exchange on which such Shares are listed or admitted for trading, in either case as reported by Bloomberg Financial Markets (**"Bloomberg"**) or The Wall Street Journal if Bloomberg is no longer reporting such information, or a similar service if Bloomberg and The Wall Street Journal are no longer reporting such information or (ii) if such Shares are not listed or admitted for trading on any national securities exchange, the last reported sale price or, in case no such sale takes place on such day, the average of the highest reported bid and the lowest reported asked quotation for such class or series of Shares, in either case as reported by Bloomberg or The Wall Street Journal if Bloomberg is no longer reporting such information, or a similar service if Bloomberg and The Wall Street Journal are no longer reporting such information.

(i) "Gaming Authority" means those national, state, local, and other governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Commission, the Nevada State Gaming Control Board, and the Clark County Liquor and Gaming Licensing Board.

(j) "Gaming Laws" means those laws pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming within any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Control Act, as codified in NRS Chapter 463, as

amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and the Clark County Code, as amended from time to time.

(k) "Gaming Licenses" means all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises and entitlements issued by any Gaming Authority necessary for or relating to the conduct of activities under the Gaming Laws.

(l) "Gaming Problem" means any circumstances that are deemed likely, in the sole and absolute discretion of Wynn, based on verifiable information or information received from any Gaming Authority or otherwise, to preclude or materially delay, impede or impair the ability of NewCo, any subsidiary of NewCo, Wynn, or any business entity with respect to which Wynn holds a Gaming License, to obtain or retain any Gaming Licenses, or to result in any disciplinary action, including without limitation the imposition of materially burdensome terms and conditions on any such Gaming License.

(m) "Independent Qualified Appraiser" means an independent outside qualified appraiser appointed by Wynn to determine the fair market value of certain Shares or NewCo

itself, in all cases considering NewCo as a going concern. Any determination by an Independent Qualified Appraiser as to fair market value shall be binding upon all parties.

(n) "Non-Compete Termination Date" means the date upon which both Baron and Wynn have sold substantially all of their respective Shares.

(o) "NRS" means the Nevada Revised Statutes, as amended from time to time.

(p) "Operating Agreement" means that certain Amended and Restated Operating Agreement of the LLC, as it may be amended and/or restated from time to time.

(q) "Percentage Interest" means, with respect to a specified Stockholder, the percentage computed by dividing the number of Shares held by such Stockholder by the Total Shares.

(r) "Permitted Transferee" means:

(i) in the case of a Transfer being made by a Stockholder who is part of the Aruze/Wynn Group, (a) Kazuo Okada; (b) an immediate family member of Kazuo Okada or Wynn; (c) a revocable, inter vivos trust of which Kazuo Okada or Wynn or a family member of Kazuo Okada or Wynn is trustee or Kazuo Okada or Wynn or a family member of Kazuo Okada or Wynn is a beneficiary; (d) another Stockholder or an entity wholly owned by such Stockholder; or (f) if the Transfer is being made by Aruze, then in addition to the Permitted Transferees described in clauses (a) through (e), any wholly owned subsidiary of Aruze Parent where the Transfer has the effect of substituting a foreign corporation for Aruze with respect to all of Aruze's Shares; or

(ii) in the case of a Transfer being made by a Stockholder who is not part of the Aruze/Wynn Group, (a) the Stockholders who are part of the Aruze/Wynn Group, provided that such Transfer is made to all Stockholders of the Aruze/Wynn Group on a pro rata basis in accordance with the respective Percentage Interest held by each Stockholder of the Aruze/Wynn Group, or (b) if the Transfer is being made by Baron, then in addition to the Permitted Transferees described in clause (a), any publicly traded, registered mutual fund managed by BAMCO.

(s) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or other entity.

(t) "Prohibited Transferee" means (a) any owner, operator, or manager of, or Person primarily engaged in the business of owning or operating, a hotel, casino, or an internet or interactive gaming site, (b) any "non-profit" or "not-for-profit" corporation, association, trust, fund, foundation or other similar entity organized and operated exclusively for charitable purposes that qualifies as a tax-exempt entity under federal and state tax law or corresponding foreign law, (c) any federal, state, local or foreign governmental agency, instrumentality or similar entity, (d) any Person that has been convicted of a felony, (e) any Person regularly engaged in or affiliated with the production or distribution of alcoholic beverages, or (f) any Unsuitable Person.

(u) "Second Amendment" means that certain Second Amendment to Amended and Restated Operating Agreement of the LLC, dated February 18, 2002, by and between Wynn and Aruze.

(v) "Shares" means the shares of capital stock of NewCo.

(w) "Specified Affiliate" means with respect to a specified Person, any other Person who or which is (a) directly or indirectly controlling, controlled by or under common control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or relative or spouse of, the specified Person. For purposes of this

definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, more than fifty percent of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(x) "Stockholders" means Wynn, Baron, Aruze, any Permitted Transferee of any Shares and any additional Persons made a party to this Agreement.

(y) "Stockholder's Shares" means all Shares held of record or Beneficially Owned by such Stockholder, whenever acquired.

(z) "Termination Date" means the earlier of the date of Wynn's death or the date upon which Wynn sells substantially all of his Shares.

(aa) "Total Shares" means the total number of Shares held by the Stockholders, whenever acquired.

(bb) "Transfer" means any transfer, sale, conveyance, distribution, hypothecation, pledge, encumbrance, assignment, exchange or other disposition, either voluntary or involuntary, or by reason of death, or change in ownership by reason of merger or other transformation in the identity or form of business organization of the owner, regardless of whether such change or transformation is characterized by state law as not changing the identity of the owner.

(cc) "Unsuitable Person" means any Person (i) who is denied a Gaming License by any Gaming Authority, (ii) who is disqualified from eligibility for a Gaming License, (iii) who is determined to be unsuitable to own or control Shares or to be connected or affiliated with a Person engaged in gaming activities in any jurisdiction by a Gaming Authority, (iv) who has withdrawn an application to be found suitable by any Gaming Authority, or (v) whose continued involvement in the business of NewCo as a stockholder, manager, officer, employee or otherwise has caused or may cause a Gaming Problem.

(dd) "Voting Stock" means capital stock of NewCo of any class or classes, the holders of which are entitled to vote on any matter required or permitted to be voted upon (either in writing or by resolution) by the stockholders of NewCo.

(ee) "Worldwide Wynn" means Worldwide Wynn, LLC, a Nevada limited liability company, which will be a wholly owned direct or indirect subsidiary of NewCo.

2. *Covenants of the Designated Stockholders.* Each Designated Stockholder hereby covenants to each other Designated Stockholder as follows:

(a) *Voting Agreement.* On all matters relating to the election of directors of NewCo, the Designated Stockholders agree to vote all Shares held by them (or the holders thereof shall consent pursuant to an action by written consent of the holders of capital stock of NewCo), respectively, so as to elect to NewCo's Board of Directors the nominees designated as follows:

(i) The number of nominees that equals the number of directors that NewCo determines shall constitute its Board of Directors, which number shall include that number of independent directors that NewCo determines is required by applicable law and regulations, the Securities and Exchange Commission, the securities exchanges on which Shares are listed or admitted for trading and appropriate practices for public corporations;

(ii) The nominees designated by Wynn (the number of such nominees shall be a majority of all nominees to NewCo's Board of Directors and shall include up to two independent directors); and

(iii) The nominees designated by Aruze (the number of such nominees shall be that number of remaining seats available on NewCo's Board of Directors after Wynn designates his nominees pursuant to Section 2(a)(ii) and shall include that number of remaining independent directors that are required to be elected after Wynn designates his nominees pursuant to Section 2(a)(ii)).

For example, under this Section 2(a), if NewCo determines that it shall have a Board of Directors comprised of nine members, three of which are independent, (i) Wynn shall designate five nominees, two of which are independent and (ii) Aruze shall designate four nominees, one of which is independent.

(b) *Bylaws.* The Designated Stockholders agree to cause the Bylaws of NewCo to provide that any actions involving (i) any voluntary dissolution or liquidation of NewCo, (ii) the sale of all or substantially all of the assets of NewCo, (ii) the merger or consolidation of NewCo and (iii) the commencement of a voluntary petition of bankruptcy by NewCo may be taken by NewCo only upon the approval of a super-majority of the directors of NewCo.

(c) *Power of Attorney.* Aruze hereby constitutes and appoints Wynn as its true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for it and in its name, place and stead, in any and all capacities, to execute and deliver any and all documents in connection with or related to the formation of NewCo, including, but not limited to, any documents necessary to transfer the LLC interests to NewCo, and to take any and all other actions as Wynn, as said attorney-in-fact and agent, may deem necessary or appropriate in connection therewith, granting unto Wynn, as said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as Aruze might or could do in person, thereby ratifying and confirming all that Wynn, acting as said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof. The powers granted herein shall commence on the date hereof and shall terminate on the Termination Date.

(d) *Restriction on Proxies and Non-Interference.* From and after the date of this Agreement and ending as of the Termination Date, the Designated Stockholder shall not, and shall cause each of its Affiliates who Beneficially Own any of the Designated Stockholder's Shares not to, directly or indirectly without the consent of the other Designated Stockholder: (A) grant any proxies or powers of attorney, deposit such Designated Stockholder's Shares into a voting trust or enter into a voting agreement with respect to any of such Designated Stockholder's Shares, (B) enter into any agreement or arrangement providing for any of the actions described in clause (A) above, or (C) take any action that could reasonably be expected to have the effect of preventing or disabling such Designated Stockholder from performing such Designated Stockholder's obligations under this Agreement.

3. *Representations and Warranties and Covenants of the Stockholders.* Each Stockholder hereby represents and warrants and covenants to each other Stockholder as follows:

(a) *Ownership.* The Stockholder shall be the record and Beneficial Owner of all of the Shares issued or distributed to such Stockholder either in exchange for the contribution of the Stockholder's interests in the LLC or through a different technique. The Stockholder shall have the sole power of disposition, sole power of conversion, sole power to demand appraisal rights and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of the Shares issued or distributed to such Stockholder either in exchange for the contribution of the Stockholder's interests in the LLC or through a different technique to form NewCo, with no material limitations, qualifications or restrictions on such rights, subject to applicable securities laws and the terms of this Agreement.

(b) *No Encumbrances.* Except as required by Sections 2(a) and 2(b), and except for those certain options granted by Wynn to Marc D. Schorr and Kenneth R. Wynn, all of the Stockholder's Shares will be held by such Stockholder, or by a nominee or custodian for the benefit of such Stockholder, free and clear of all liens, claims, security interests, proxies, voting trusts or agreements, understandings or arrangements or any other encumbrances whatsoever, except for any liens, claims, understandings or arrangements that do not limit or impair the Stockholder's ability to perform its obligations under this Agreement.

(c) *Execution, Delivery and Performance by the Stockholder.* The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Stockholder, as applicable, and the Stockholder has taken all other actions required by law, its Articles of Incorporation and its Bylaws or other organizational documents, as applicable, to consummate the transactions contemplated by this Agreement. This Agreement constitutes the valid and binding obligations of the Stockholder and is enforceable in accordance with its terms, except as enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally.

(d) *No Conflicts.* No filing with, and no permit, authorization, consent or approval of, any state or federal public body or authority is necessary for the execution of this Agreement by the Stockholder and the consummation by the Stockholder of the transactions contemplated hereby, except where the failure to obtain such consent, permit, authorization, approval or filing would not interfere with the Stockholder's ability to perform its obligations hereunder, and none of the execution and delivery of this Agreement by the Stockholder, the consummation by the Stockholder of the transactions contemplated hereby or compliance by the Stockholder with any of the provisions hereof shall violate any order, writ, injunction, decree, judgment, statute, rule or regulation applicable to the Stockholder or any of its properties or assets, in each such case except to the extent that any conflict, breach, default or violation would not interfere with the ability of the Stockholder to perform the obligations hereunder.

(e) *Preemptive Rights.* If a Stockholder purchases Shares from NewCo (the **"Purchasing Stockholder"**) in a private placement (the **"Purchase"**) and another Stockholder who is not a Permitted Transferee of the Purchasing Stockholder is not extended the same offer by NewCo on the same terms and conditions, the Purchasing Stockholder shall allow such other Stockholder to purchase the number of Shares in the Purchasing Stockholder's allotment of Shares from NewCo that is necessary to maintain their Shares in the same proportion to each other as that which existed prior to the Purchase.

4. *Transferee Bound by Agreement.* Notwithstanding anything to the contrary in this Agreement, Shares may not be transferred or sold by any Stockholder unless the transferee (including a Permitted Transferee) both executes and agrees to be bound by this Agreement, including, without limitation, in a sale or transfer made pursuant to Rule 144 under the Securities Act (**"Rule 144"**); provided, however, that this Section 4 shall not apply to any sale or transfer made by a Stockholder pursuant to Rule 144 if that sale or transfer and all other sales and transfers made by such Stockholder pursuant to Rule 144 during the term of this Agreement do not exceed, in the aggregate, ten percent of the Shares held by such Stockholder.

5. *Stop Transfer.* From and after the date of this Agreement and ending as of the Termination Date, each Stockholder acknowledges that Wynn may instruct NewCo to not register the transfer (book-entry or otherwise) of any certificate or uncertificated interest representing any of such Stockholder's Shares that are transferred in violation of this Agreement.

6. *Aruze Non-Compete.* Aruze covenants to Wynn and Baron that until the Non-Compete Termination Date and so long as Aruze is a stockholder of NewCo (or of a successor entity to NewCo), Aruze, Aruze Parent, and Kazuo Okada agree that (other than through NewCo, Worldwide Wynn and their Specified Affiliates) Aruze, Aruze Parent, and Kazuo Okada shall not without Wynn's consent, directly or indirectly, engage in the development of or own, operate, lease, manage, control or invest in, act as consultant or advisor to or otherwise assist any Person that engages in (a) casino operations in Clark County, Nevada or, if NewCo is conducting gaming activities in Macau, Macau, or (b) Internet gaming anywhere in the world; provided, however, that either Aruze Parent or Kazuo Okada may operate a business offering Internet gaming if the forms of gaming offered by such business are restricted to games derived from pachinko or pachi-slot machines or other games not authorized for manufacture or distribution in the State of Nevada or, if NewCo is conducting gaming activities in Macau, Macau.

7. *Stockholders' Option to Purchase Bankrupt Stockholder's Shares.*

(a) Upon the institution of a Bankruptcy by or against a Stockholder (a **"Bankrupt Stockholder"**), the Stockholders, not including the Bankrupt Stockholder, shall have the option to purchase the Bankrupt Stockholder's Shares in NewCo for a price agreed upon by the Stockholders, not including the Bankrupt Stockholder, on the one hand, and the Bankrupt Stockholder, on the other hand, or if no price can be agreed upon, the Fair Market Value of such Shares at the time of such Bankruptcy. If information is not available to determine the Fair Market Value of such Shares at the time of such Bankruptcy, the price shall be the fair market value as determined by an Independent Qualified Appraiser. The Stockholders wishing to purchase all or a part of the Shares of the Bankrupt Stockholder (the **"Purchasing Stockholders"**) shall pay the agreed price, the Fair Market Value or the fair market value as determined by an Independent Qualified Appraiser, as applicable, of such Shares to the Bankrupt Stockholder, in cash or its equivalent, within one hundred and twenty (120) days after the date the Bankruptcy petition is filed by or against the Bankrupt Stockholder. Each Purchasing Stockholder must notify the other Stockholders of such Purchasing Stockholder's desire to purchase all or

a portion of the Bankrupt Stockholder's Shares in writing within twenty (20) days after the date the Bankruptcy petition is filed by or against the Bankrupt Stockholder. Unless they agree otherwise, if there is more than one Purchasing Stockholder, each Purchasing Stockholder may purchase the proportion of the Bankrupt Stockholder's Shares that such Purchasing Stockholder's Percentage Interest bears to the aggregate Percentage Interests of all Purchasing Stockholders. If no remaining Stockholder wishes to purchase the Bankrupt Stockholder's Shares, or the Purchasing Stockholders do not purchase the Bankrupt Stockholder's Shares within the time periods set forth above, then all rights to purchase the Bankrupt Stockholder's Shares pursuant to this Section shall terminate.

(b) Any Stockholder may, in its sole and absolute discretion, assign its rights under this Section 7 to purchase the Bankrupt Stockholder's Shares to NewCo.

8. *Restrictions on Transfer of Ownership Interests in Stockholders.*

(a) Except for a Transfer to a Permitted Transferee, any Transfer or issuance of an ownership interest in any Stockholder (other than Baron) or in any entity that directly or indirectly owns a majority ownership interest in a Stockholder (other than Baron) (an **"Upstream Ownership Interest"**) shall be prohibited unless in compliance with the procedures and requirements set forth in this Section 8.

(b) The Shares that would be indirectly transferred by the transfer of the Upstream Ownership Interest (an **"Upstream Transfer"**) shall be referred to as the **"Indirect Transfer Shares"**. If any holder of an Upstream Ownership Interest (an **"Upstream Transferor"**) intends to Transfer all or any part of its Upstream Ownership Interest pursuant to a bona fide

offer received from any Person (the **"Upstream Offeror"**), prior to accepting such offer the Upstream Transferor shall provide written notice to each Stockholder, other than the Stockholder holding the Indirect Transfer Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Upstream Offeror. If the Upstream Transferor does not provide such notice, the Stockholder holding the Indirect Transfer Shares shall provide such notice to each other Stockholder promptly upon learning that such transaction will occur or has occurred. Within 15 days following receipt of such notice by the Stockholders other than the Stockholder holding the Indirect Transfer Shares, or if later, within 30 days of such other Stockholders learning that the Transfer of the Upstream Ownership Interest has occurred, such other Stockholders (i) if information is available to determine the Fair Market Value of such Indirect Transfer Shares, may elect to purchase the percentage of the Indirect Transfer Shares available for purchase equal to such Stockholder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the Fair Market Value of such Shares, or (ii) if information is not available to determine the Fair Market Value of such Indirect Transfer Shares, may, by notice to the Stockholder holding the Indirect Transfer Shares, elect to obtain an appraisal by an Independent Qualified Appraiser of the fair market value of the Indirect Transfer Shares. Within 15 days following receipt by the Stockholders other than the Stockholder holding the Indirect Transfer Shares of the results of the appraisal, each such other Stockholder may elect to purchase the percentage of the Indirect Transfer Shares available for purchase equal to such holder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the appraisal price of such Shares. To the extent a Stockholder shall determine not to purchase all the Indirect Transfer Shares available to that Stockholder, the other Stockholders exercising the right to purchase the Indirect Transfer Shares may purchase additional Indirect Transfer Shares on a pro rata basis in proportion to their Percentage Interests (and the foregoing procedure shall be repeated in respect of any Indirect Transfer Shares not purchased until such other Stockholders have had an opportunity to purchase any remaining Indirect Transfer Shares). Notwithstanding anything to the contrary in this Section 8, any Transfer or issuance of shares in Aruze Parent shall not constitute an Upstream Transfer if immediately following such Transfer or issuance Kazuo Okada is more than a fifty percent shareholder in Aruze Parent and has the right to directly exercise more than fifty percent of the voting power of the shareholders of Aruze Parent.

(c) The closing of a purchase of Indirect Transfer Shares by a Stockholder under this Section 8 shall occur within 10 days following the expiration of the last period during which a Stockholder might elect to purchase any of the Indirect Transfer Shares, or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable).

(d) Any Stockholder may, in its sole and absolute discretion, assign its rights under this Section 8 to purchase the Indirect Transfer Shares to NewCo with respect to any Upstream Transfer.

9. *Right of First Refusal.*

(a) Any Stockholder (a **"Transferor"**) who wishes to Transfer any or all of its Shares (the **"Offered Shares"**) to any Person other than a Permitted Transferee and who receives a bona fide offer from any Person (the **"Offeror"**) who is not a Prohibited Transferee for the purchase of all or any portion of such Stockholder's Shares shall, prior to accepting such offer, provide written notice (the **"Notice of Offer"**) thereof to each other Stockholder holding Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Offeror. Following the delivery to the other Stockholders of the Notice of Offer, each other Stockholder may elect to purchase that

percentage of the Offered Shares which is equal to the Total Shares (excluding the Offered Shares) owned by each such Stockholder divided by the Total Shares (excluding the Offered Shares) owned by all such Stockholders (**"Applicable Percentage"**) during a fifteen-day refusal period (the **"Refusal Period"**) on the terms set forth in the Notice of Offer. To the extent any Stockholder shall determine not to purchase its Applicable Percentage prior to the expiration of the Refusal Period, the accepting Stockholders (the **"Accepting Purchasers"**) may purchase such Shares on a pro rata basis in proportion to the number of Shares owned by each of them (and the foregoing procedure shall be repeated in respect of any Shares not purchased until all Accepting Purchasers have had an opportunity to purchase any remaining Shares).

(b) Subject to the requirements of Section 4, if all or any of the Offered Shares shall remain unsold after completion of the procedures set forth in Section 9(a), the Transferor may sell such remaining Offered Shares to the Offeror within six months of the completion of such procedures on terms no more favorable than those set forth in the Notice of Offer; *provided* that the Offeror is not a Prohibited Transferee. To the extent any

of the Offered Shares are not sold in accordance with the foregoing, the Stockholders shall continue to have a right of first refusal under this Section 9 with respect to any Transfers to any Person which are subsequently proposed by such Transferor.

(c) The closing of a purchase by a Stockholder under this Section 9 shall occur within ten days after the end of the Refusal Period or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable). At such closing the Transferor and the relevant Accepting Purchaser (and any or all other Stockholders as may be required) shall execute an assignment and assumption agreement and any other instruments and documents as may be reasonably required by such Stockholder to effectuate the transfer of such Shares free and clear of any liens, claims or encumbrances, other than as specifically permitted hereunder. Any Transfer to any Person that does not comply with the provisions of this Section 9, other than a Transfer expressly provided for in the other provisions of this Agreement, shall be null and void and of no effect whatsoever.

(d) Any Stockholder may, in its sole and absolute discretion, assign its right of first refusal under this Section 9 to purchase the Offered Shares to NewCo with respect to any incident in which its right of first refusal is triggered under this Section 9.

(e) Except for Shares transferred pursuant to Sections 7, 8, and 10, no Shares may be Transferred, including, but not limited to, those Shares Transferred pursuant to Section 4, until the provisions of this Section 9 have been complied with.

10. *Tag-Along Rights.*

(a) If Wynn is the Transferor required to provide the Notice of Offer under Section 9(a), then Aruze and Baron shall each have a right (in addition to its rights under Section 9) to participate in such Transfer pursuant to the provisions of this Section 10(a). During the fifteen-day Refusal Period described in Section 9(a), each of Aruze and Baron may, by written notice to Wynn, elect to participate in such Transfer and to sell that percentage of the Total Shares owned by Aruze or Baron, as the case may be, which is equal to the Total Shares that will be sold by Wynn in such Transfer divided by the Total Shares owned by Wynn. The terms and conditions of such Transfer (including the purchase price per Share sold in such Transfer, the identity of the buyer(s), and the consequences resulting from the other Stockholders' exercise of any rights of first refusal) shall be no less favorable to Aruze or Baron, as the case may be, than to Wynn; provided, however, that Wynn may enter into service, noncompetition, or similar agreements with the buyer and receive appropriate consideration thereunder in which other Stockholders do not share.

(b) If Aruze is the Transferor required to provide the Notice of Offer under Section 9(a), then Wynn and Baron shall each have a right (in addition to his or its rights under Section 9) to participate in such Transfer pursuant to the provisions of this Section 10(b). During the fifteen-day Refusal Period described in Section 9(a), each of Wynn and Baron may, by written notice to Aruze, elect to participate in such Transfer and to sell that percentage of the Total Shares owned by Wynn or Baron, as the case may be, which is equal to the Total Shares that will be sold by Aruze in such Transfer divided by the Total Shares owned by Aruze. The terms and conditions of such Transfer (including the purchase price per Share sold in such Transfer, the identity of the buyer(s), and the consequences resulting from the other Stockholders' exercise of any rights of first refusal) shall be no less favorable to Wynn or Baron, as the case may be, than to Aruze; provided, however, that Aruze may enter into service, noncompetition, or similar agreements with the buyer and receive appropriate consideration thereunder in which other Stockholders do not share.

11. *Aruze Shares.* Aruze and Wynn agree that each of them shall have rights and obligations with respect to Aruze's Shares that are the same as those that are reflected in the Second Amendment with respect to Aruze's membership interests in the LLC; provided, however, that in any purchase by Wynn of Aruze's Shares, Wynn may elect to give Aruze a promissory note in the same manner as described in paragraph 4 of the Second Amendment. Aruze and Wynn also agree to cause NewCo to have rights and obligations with respect to Aruze's Shares that are the same as those that are reflected in the Second Amendment with respect to Aruze's membership interests in the LLC; provided, however, that in any purchase by NewCo of Aruze's Shares with a promissory note, such promissory note shall have terms and be in a form that (i) the making of the promissory note and the payments with respect to the promissory note would not violate the terms, covenants or restrictions of any indenture or other debt or financing agreement to which NewCo or any subsidiary of NewCo is a party, or (ii) otherwise create or constitute a default, or a condition that with the passage of time would create or constitute a default, under any indenture or other debt or financing agreement to which NewCo or any subsidiary of NewCo is a party.

12. *Joinders.* The Stockholders acknowledge that Wynn shall have the right in his sole and absolute discretion to allow one or more additional Persons who become stockholders of NewCo to become a party to this Agreement as a Stockholder, through the execution of one or multiple joinders to this Agreement and that all provisions of this Agreement shall apply to such Persons; provided, however, that such Persons shall not have any rights under Sections 2, 3(e), 6 and 10 of this Agreement.

13. *Recapitalization.* In the event of a stock dividend or distribution, or any change in the Shares (or any class thereof) by reason of any split-up, recapitalization, merger, combination, exchange of shares or the like, the term "Shares" shall include, without limitation, all such stock dividends and distributions and any shares into which or for which any or all of the Shares (or any class thereof) may be changed or exchanged as may be appropriate to reflect such event.

14. *Stockholder Capacity.* No Stockholder or any of its Affiliates makes any agreement or understanding herein in any capacity it may have as a director or officer of NewCo and nothing herein shall limit or affect any action taken by any Stockholder in any such capacity.

15. *Miscellaneous.*

(a) *Entire Agreement.* This Agreement and the Operating Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

(b) *Legend.* Concurrently with the issuance of the Shares issued in exchange for a Stockholder's interests in the LLC or through a different technique, such Stockholder shall request that NewCo imprint or otherwise place, on certificates representing such Shares the following restrictive legend (the **"Legend"**) (in addition to any other legend required by applicable gaming laws):

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A STOCKHOLDERS AGREEMENT DATED AS OF APRIL 11, 2002, WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING AND TRANSFER OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO HAVE AGREED TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH STOCKHOLDERS AGREEMENT. A COPY OF SUCH STOCKHOLDERS AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."

(i) Each Stockholder agrees that, from and after the date of this Agreement and ending as of the Termination Date, it shall not, and shall cause each of its Affiliates who Beneficially Own any of the Stockholder's Shares not to, allow NewCo to remove, and shall not permit to be removed (upon registration of transfer, reissuance or otherwise), the Legend from any such certificate and shall place or cause to be placed the Legend on any new certificate issued to represent Shares it or any of its Affiliates shall Beneficially Own.

(c) *Transfers in Violation Void.* Any transfer or sale of any Shares in violation of this Agreement shall be null and void *ab initio*, and the Stockholders acknowledge that Wynn may instruct NewCo to not register, recognize or give effect to any such transfer or sale, nor shall the intended transferee acquire any rights in such Shares for any purpose.

(d) *Amendments, Waivers, Etc.* This Agreement may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by the parties hereto; provided, however, that (i) Wynn and Aruze may by writing amend those provisions that address rights and obligations only between Wynn and Aruze and (ii) Wynn, Aruze and Baron may by writing amend those provisions that address rights and obligations only between Wynn, Aruze and Baron.

(e) *Notices.* All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly received if so given) by hand delivery, telegram, telex or telecopy, or by mail (registered or certified mail, postage prepaid, return receipt requested) or by any courier service, such as Federal Express, providing proof of delivery. All communications hereunder shall be delivered to the respective parties at the following addresses or the addresses set forth on the signature pages hereto:

If to Aruze:
Aruze USA, Inc.
745 Grier Drive
Las Vegas, Nevada 89119
Facsimile: 702.361.3407
Attention: Koiki Ohba

With a copy to:
Holland & Knight LLP
633 West Fifth Street, 21st Floor
Los Angeles, California 90071
Facsimile: 213.896.2450
Attention: Tasha D. Nguyen

If to Baron Asset Fund:
Baron Asset Fund
c/o Baron Funds
767 Fifth Avenue, 49th Floor
New York, New York 10153
Facsimile: 212.583.2014
Attention: Linda S. Martinson, Esq.

If to Wynn:
Stephen A. Wynn
c/o Wynn Resorts, LLC
3145 Las Vegas Boulevard South
Los Vegas, Nevada 89109
Facsimile: 702.791.0167

With a copies to:
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Facsimile: 310.203.7199
Attention: C. Kevin McGeehan, Esq.

Wynn Resorts, LLC
3145 Las Vegas Boulevard South
Los Vegas, Nevada 89109
Facsimile: 702.733.4596
Attention: Legal department.

or to such other address as the Person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

(f) *Severability.* Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any

other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

(g) *Specific Performance.* Each of the parties hereto recognizes and acknowledges that a breach by any party hereto of any covenants or agreements contained in this Agreement will cause the other parties hereto to sustain damages for which they would not have an adequate remedy at law for money damages, and therefore each of the parties hereto agrees that in the event of any such breach the parties shall be entitled to the remedy of specific performance of such covenants and agreements and injunctive and other equitable relief in addition to any other remedy to which he may be entitled, at law or in equity.

(h) *Further Assurances.* From time to time, the Stockholders shall execute and deliver such additional documents as may be necessary or desirable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

(i) *Remedies Cumulative.* All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

(j) *No Waiver.* The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.

(k) *No Third Party Beneficiaries.* This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person or entity who or which is not a party hereto; provided that, except as otherwise provided in this Agreement, the obligations of the Stockholders hereunder shall inure to their transferees, successors and heirs.

(l) *No Assignment.* Except as otherwise explicitly provided herein, neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any Stockholder without the prior written consent of Wynn and Aruze and any attempt to do so will be void; provided, however, that the rights under this Agreement may be assigned to any transferee in connection with a Transfer that does not violate the terms of this Agreement.

(m) *Governing Law.* This Agreement shall be governed and construed in accordance with the laws of the state of incorporation of NewCo, without giving effect to the principles of conflicts of law thereof.

(n) *Jurisdiction.* Each party hereby irrevocably submits to the exclusive jurisdiction of the state courts in the state of incorporation of NewCo in any action, suit or proceeding arising in connection with this Agreement, and agrees that any such action, suit or proceeding shall be brought only in such court (and waives any objection based on forum non conveniens or any other objection to venue therein); provided, however, that such consent to jurisdiction is solely for the purpose referred to in this paragraph and shall not be deemed to be a general submission to the jurisdiction of the courts of the state of incorporation of NewCo other than for such purposes. Each party hereto hereby waives any right to a trial by jury in connection with any such action, suit or proceeding.

(o) *Descriptive Headings.* The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

(p) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. This Agreement shall not be effective as to any party hereto until such time as this Agreement or a counterpart thereof has been executed and delivered by each party hereto.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by Wynn and a duly authorized officer of Aruze and Baron on the day and year first written above.

/s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

ARUZE USA, INC.

By: /s/ KAZUO OKADA

Name: Kazuo Okada

Title: *President*

BARON ASSET FUND

By: /s/ RONALD BARON

Name: Ronald Baron

Title: *Chairman and CEO*

QuickLinks

Exhibit 10.11

AGREEMENT

FOR

GUARANTEED MAXIMUM PRICE
CONSTRUCTION SERVICES

BETWEEN

WYNN LAS VEGAS, LLC
("Owner")

AND

MARNELL CORRAO ASSOCIATES, INC.
("Contractor")

FOR

LE RÊVE

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AGREEMENT FOR GUARANTEED MAXIMUM PRICE CONSTRUCTION SERVICES
LE RÊVE

This Agreement for Guaranteed Maximum Price Construction Services ("*Agreement*"), effective as of June 4, 2002 (the "*Effective Date*") is entered into between WYNN LAS VEGAS LLC, a Nevada limited liability company ("*Owner*"), and MARNELL CORRAO ASSOCIATES, INC., a Nevada Corporation ("*Contractor*"), with regard to the following.

RECITALS

A. Owner owns the real property commonly known as 3131 Las Vegas Boulevard South, Las Vegas, Nevada and more particularly described on *Exhibit A* attached hereto and incorporated herein by the reference ("*Site*").

B. Owner desires to construct on the Site a first class luxury resort and casino, including high-rise hotel space and low rise space comprised of casino and gaming areas, restaurants, retail, convention and meeting areas, an "*Aqua Theatre*" showroom, and exterior features, and all on-Site and off-Site improvements and infrastructure related thereto, all in full accordance with the Contract Documents, including the Drawings and Specifications, and including the Work (as defined below) (the "*Project*"). Contractor's Work is only a portion of the Project. The Project also includes services and materials to be provided by Owner and other separate contractors and consultants.

C. Contractor and Owner acknowledge that the Drawings and Specifications are not complete, and Contractor and Owner agree to work together to complete the Drawings and Specifications as provided in this Agreement, including consistent with the Guaranteed Maximum Price Premises and Assumptions and Project Schedule.

D. Owner desires to engage Contractor to construct, and supervise the construction of, that portion of the Project comprising the Work as more fully described in this Agreement, and Contractor desires to accept such engagement, upon the terms and conditions contained in this Agreement.

AGREEMENT

In consideration of the mutual covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Owner hereby adopt and incorporate the foregoing Recitals and agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Architect. The "Architect" for the Project is Butler/Ashworth Architects, Ltd., LLC. or any other architect designated by Owner to Contractor in writing; provided, however, solely with regard to the Aqua Theatre, the term Architect shall mean A.A. Marnell II, Chtd. pursuant to that certain Professional Design Services Agreement dated as October 5, 2001.

1.2 Change, Change Order, Change Proposal and Construction Change Directive. The terms Change, Change Order, Change Proposal and Construction Change Directive are defined in Article 18 of this Agreement.

1.3 Claim. The term Claim is defined in *Section 20.1* of this Agreement.

1.4 Contract. Collectively the Contract Documents described in *Section 1.5* below form the entire contract for implementation of the Work and are collectively referred to as the "*Contract*".

1.5 Contract Documents. "*Contract Documents*" shall consist of the documents listed in this *Section 1.5* which are hereby incorporated herein by this reference:

1.5.1 This Agreement (including all Exhibits hereto);

1.5.2 The Drawings (as defined in *Section 1.8* below);

1.5.3 The Specifications (as defined in *Section 1.16* below);

1.5.4 The Project Schedule (as defined in *Section 11.2* of this Agreement and attached hereto as *Exhibit B*);

1.5.5 The list of those personnel assigned by Contractor as Contractor's Personnel, attached hereto as *Exhibit C*;

1.5.6 All contracts and purchase orders of Contractor with Subcontractors and/or Vendors with attachments thereto;

1.5.7 The list of Contractor's Owned Equipment to be rented to Owner pursuant to *Section 3.2.6* of this Agreement, attached hereto as *Exhibit D*;

1.5.8 The Schedule of Values (as defined in *Section 5.1* of this Agreement);

1.5.9 Guaranteed Maximum Price Premises and Assumptions, as defined in *Section 3.1.8.1* of this Agreement;

1.5.10 Technical Studies and Reports (as defined in *Section 7.2* of this Agreement); and

1.5.11 All supplements, addenda, modifications and amendments to any of the foregoing *Sections 1.5.1* through and including *1.5.10*, from time to time approved by Owner in writing, including, without limitation, any Change Orders (as defined in *Section 18.2* of this Agreement) and Construction Change Directives (as defined in Article 18 of this Agreement), and such other documents expressly referred to in the foregoing documents as being a part of the Contract Documents. The Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, and Contractor's bid or portion of addenda relating to bidding requirements, except to the extent included as part of a subcontract approved in accordance with this Agreement and not inconsistent with this Agreement).

1.6 Contract Time. The "Contract Time" is the period of time for the Contractor to achieve Substantial Completion of the Work in its entirety as further described in *Section 4.1* of this Agreement.

1.7 Cost of the Work. Cost of the Work shall have the meaning set forth in *Section 3.2* of this Agreement.

1.8 Drawings. "Drawings" are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, which are approved for use during construction and show the design, location and dimensions of the Work and Project including plans, elevations, sections, diagrams and other details; provided, however, Owner and Contractor acknowledge that as of the Effective Date the Drawings are not complete. The Drawings include those listed on *Exhibit E* attached hereto and incorporated herein by this reference.

1.9 Final Completion. Final Completion shall have the meaning set forth in *Section 12.2* of this Agreement.

1.10 Guaranteed Date of Substantial Completion. The term Guaranteed Date of Substantial Completion is defined in *Section 4.1* of this Agreement.

1.11 Guaranteed Maximum Price. The term Guaranteed Maximum Price shall have the meaning set forth in *Section 3.1* of this Agreement.

1.12 Major Permits. Major Permits are the architectural, grading and structural permits, including plan check fees and transportation taxes directly relating thereto, for the major building components of the Project. Major Permits shall not include individual permits relating to individual

Subcontractor's respective portions of the Work, other than those identified in this *Section 1.12*, unless otherwise agreed upon by Owner and Contractor (provided, however, Owner shall pay for the plan check fees and transportation taxes relating to the mechanical, electrical and plumbing permits for the Project).

1.13 Modification. The Contract Documents may be amended only by a "*Modification*" which is defined to mean any of the following:

1.13.1 A written amendment to the Contract identified as such and signed by both parties;

1.13.2 A Change Order as defined in Article 18 of this Agreement;

1.13.3 A Construction Change Directive as defined in Article 18 of this Agreement; or

1.13.4 A Minor Change as defined in *Section 18.9* of this Agreement.

1.14 Owner's Lenders. The term Owner's Lenders is defined in Article 21 of this Agreement.

1.15 Principal Interior Designer. The "Principal Interior Designer" for the Project is Wynn Design and Development, LLC. For purposes of Contractor's Work, the Architect shall be responsible for coordinating the activities of the Principal Interior Designer.

1.16 Specifications. "Specifications" are that portion of the Contract Documents, wherever located and whenever issued, which are approved by Owner for use during construction and set forth the minimum written requirements for materials, equipment, construction systems, standards and workmanship for the Work; provided, however, Owner and Contractor acknowledge that as of the Effective Date the Specifications are not complete.

1.17 Subcontractor. "Subcontractor" means any person or entity (including employees, agents and representatives thereof) (including laborers) who has a contract with or is engaged by Contractor, or with any other Subcontractor, at any tier to construct or perform a portion of the Work and/or provide construction related services for the Work at the Site, and includes any party any of them are responsible or liable for at law or under the Contract Documents.

1.18 Substantial Completion. "Substantial Completion" shall have the meaning set forth in *Section 12.1* of this Agreement.

1.19 Substitution. "Substitution" means the substitution of any materials or equipment specified in the Contract Documents, or any design change, initiated by the Contractor and approved by Owner in advance and in writing pursuant to *Section 7.10* of this Agreement after the Effective Date.

1.20 Vendor. "Vendor" means any person or entity (including employees, agents and representatives thereof) which has a purchase order or other agreement to provide materials, supplies, equipment and/or related services for the Work and/or provide installation services at the Site for the Work, through a contract, purchase order or other arrangement with Contractor or any Subcontractor at any tier, and includes any party any of them are responsible or liable for at law or under the Contract Documents.

1.21 Work. "Work" means the totality of the obligations imposed upon Contractor by the Contract Documents, including, without limitation, the supply and performance by Contractor, directly and through Subcontractors and Vendors, of all things necessary and/or reasonably inferable from the Contract Documents as being required or necessary to fully complete the tasks and improvements described in *Exhibit F* attached hereto as Contractor's Work, in accordance with the requirements of the Contract Documents, including, but not limited to, all labor, services, materials, equipment, tools, machinery and fabrication. The term "Work" does not include the exclusions or Owner's separate work as identified on *Exhibit F* attached hereto.

ARTICLE II.
INTENT, INTERPRETATION AND CORRELATION

2.1 Intent of the Contract Documents. The intent of the Contract Documents is for the Contractor to perform and supply, and Owner hereby engages Contractor to and Contractor hereby agrees to perform and supply, the Work, including all necessary scheduling, procurement, supervision, construction, and construction management services and supply all necessary labor, materials, equipment and related work and services, including all things reasonably inferable from the Contract Documents as being necessary to fully complete the Work and obtain the intended results described in *Exhibit F* attached hereto, in accordance with the requirements of the Contract Documents, including, but not limited to the requirements of the Project Schedule and the Guaranteed Maximum Price requirements set forth in Article 3 below. The enumeration of particular items in the Specifications and/or Drawings and/or other Contract Documents shall not be construed to exclude other items. The Contract Documents are complementary, and what is required by or reasonably inferable from any one of the Contract Documents (including either a Drawing or Specification) as being necessary to produce the intended results shall be binding and required as a part of the Work as if required by all Contract Documents.

2.2 Order of Precedence. Subject to the provisions of *Section 2.3* hereof, in the event of any conflicts or inconsistencies which cannot be resolved by reading the Contract Documents as a whole, the provisions of the Contract Documents shall be controlling in accordance with the following order of precedence:

2.2.1 This Agreement;

2.2.2 The Drawings;

2.2.3 Specifications; and

2.2.4 Other Contract Documents incorporated by reference.

2.3 Contractor's Compliance with Contract Documents.

2.3.1 Contractor hereby agrees and accepts that Contractor has a duty to refer all questions with respect to any doubts or concerns over the intent or appropriate interpretation of the Contract Documents to Owner for Owner's decision. Contractor agrees, accepts and assumes that Owner's decision will require implementation of the most stringent requirements among any conflicting provisions of the Contract Documents as being part of the Work.

Contractor agrees to be bound by all decisions by Owner to implement the most stringent of any conflicting requirements within the Contract Documents. Any failure by Contractor to seek such clarifications shall in no way limit Owner's ability to require implementation, including replacement of installed Work at a later date at Contractor's sole expense, to achieve compliance with the more stringent requirements.

2.3.2 The failure of Owner to insist in any one or more instances upon a strict compliance with any provision of this Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of Owner's right thereafter to require compliance with such provision of this Contract, or as being a waiver of Owner's right thereafter to exercise such option, and such provision or option will remain in full force and effect.

2.3.3 If there is any inconsistency in the Drawings or any conflict between the Drawings and Specifications, Contractor shall provide the better quality or greater quantity of Work or materials, as applicable, unless Owner directs otherwise in writing.

2.3.4 Contractor shall be responsible for dividing the Work among the appropriate Subcontractors and Vendors. No claim will be entertained by Owner based upon the organization

or arrangement of the Specifications and/or the Drawings into areas, sections, subsections or trade disciplines.

2.3.5 Detail drawings shall take precedence over scale drawings, and figured dimensions on the Drawings shall govern the setting out of the Work.

2.3.6 Unless the Specifications expressly state otherwise, references to documents and standards of professional organizations shall mean the latest editions published prior to the Effective Date.

2.3.7 Technical words, abbreviations and acronyms in the Contract Documents shall be used and interpreted in accordance with customary usage in the construction industry.

2.3.8 Whenever consent, permission or approval is required from any party pursuant to the provisions of the Contract Documents, such consent, permission or approval shall, unless expressly provided otherwise in this Agreement, be given or obtained, as applicable, in writing.

ARTICLE III.
GUARANTEED MAXIMUM PRICE

3.1 Guaranteed Maximum Price. Subject to additions and deductions which may be made only in accordance with the Contract Documents, Contractor represents, warrants and guarantees to Owner that the total maximum cost to be paid by Owner for Contractor's complete performance under the Contract Documents, including, without limitation, Final Completion of all Work, all services of Contractor under the Contract, and all fees, compensation and reimbursements to Contractor, shall not exceed the total amount of Nine Hundred One Million Eight Hundred Eighty Three Thousand Seven Hundred Ten Dollars ($901,883,710.00) ("*Guaranteed Maximum Price*"). Costs which would cause the Guaranteed Maximum Price (as may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Contractor without reimbursement by Owner.

3.1.1 Guaranteed Maximum Price Components. The Guaranteed Maximum Price is comprised of the maximum amount payable by Owner for:

3.1.1.1 the Cost of the Work listed in *Subsection 3.2* hereof for full and complete performance of the Work in strict accordance with Contract Documents, and

3.1.1.2 a fixed fee to Contractor in the amount of $30,000,000.00 ("*Contractor's Fee*").

The Contractor's Fee shall be the Contractor's sole and exclusive compensation for all costs described as Non-Allowable Costs of the Work in *Section 3.3* hereof and is inclusive of all overhead and profit arising out of or relating to the Contractor's Work. The Guaranteed Maximum Price is further broken down into line items and categories on *Exhibit F* attached hereto.

3.1.2 Cost Overruns. Subject to additions or deductions which may be made in accordance with the Contract Documents, Contractor shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from Owner. Contractor is not entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in this Article 3.

3.1.3 Proof of Funds. If at any time or from time to time Owner reasonably believes that based on the progress of the Work and Cost of the Work that at any point the Work cannot be completed for the Guaranteed Maximum Price, Owner shall have the right to require Contractor to provide Owner with satisfactory evidence of funds available to Contractor to pay any anticipated overage. Prior to Owner exercising any rights under this Section, Owner shall first provide written notice to Contractor requesting satisfactory evidence of available funds and shall include in the

request a) the reasons for Owner's belief that the Work cannot be completed for the Guaranteed Maximum Price and b) the method and manner by which Owner calculates the anticipated overage. Contractor shall, within ten days following receipt of this written notice from Owner, provide Owner with either i) evidence reasonably satisfactory to Owner that the Work can be completed within the Guaranteed Maximum Price and the basis upon which Contractor believes this to be accurate or ii) satisfactory evidence of funds available to make up any anticipated overage. If Owner, after reviewing the evidence submitted by Contractor pursuant to paragraph i) herein, still reasonably believes that the Work cannot be completed for the Guaranteed Maximum Price, then Owner shall have the right to notify Contractor in writing of Owner's determination thereof and Contractor shall, within five days of receipt of Owner's written notice of this determination, provide Owner with satisfactory evidence of funds available to pay any anticipated overage as described in Owner's initial request for proof of funds. Contractor's failure to timely provide such satisfactory evidence to Owner of available funds shall constitute a default under this Agreement.

3.1.4 Inferable Work. Contractor agrees that the scope of the Guaranteed Maximum Price includes Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, or consistent therewith, and such Work shall be performed by Contractor without any increase in the Guaranteed Maximum Price.

3.1.5 Owner Contingency. The Guaranteed Maximum Price includes an Owner contingency in the amount of $7,565,200.00 ("*Owner Contingency*"). To allocate a portion of the Owner Contingency to a portion of the Work for any purpose, Contractor shall submit a Change Proposal (as defined in *Section 18.3.1* of this Agreement) to Owner setting forth in reasonable detail why the allocation is required. Contractor and Owner will then follow the procedure described in Article 18 of this Agreement. Each allocation of the Owner Contingency by Contractor and approved by Owner shall be reflected on the respective Application for Progress Payment for the period during which Contractor makes such approved allocation. Any portion of the Owner Contingency remaining unallocated at Final Completion shall be a credit against and reduce the Guaranteed Maximum Price.

3.1.6 Construction Contingency. The Guaranteed Maximum Price includes a construction contingency in the amount of $44,987,078.00 ("*Construction Contingency*"). Subject to the terms of the Contract Documents, Contractor shall be entitled to allocate from and apply against the Construction Contingency Costs of the Work for the following, and no other, purposes relating to the Work: (a) implementation of any Recovery Plan, (b) cost overruns, (c) Minor Changes in the Work, (d) warranty costs prior to Final Completion, (e) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the Guaranteed Maximum Price (pursuant to *Section 3.1.8.2* or *3.1.8.3* of this Agreement), (f) any purpose expressly authorized in this Agreement, and (g) concealed conditions; provided, however, that Contractor may not apply, use or allocate from the Construction Contingency any amounts for any of the foregoing purposes that are the result of, relate to or arise from any material breach or material failure to perform by, Contractor, any Subcontractor or Vendor (except as necessary to replace any Subcontractor or Vendor because of the bankruptcy or failure to perform of such Subcontractor or Vendor), or any party for which any of them are liable or responsible at law or under the Contract Documents or for any Non-Allowable Costs of the Work. Each allocation of the Construction Contingency by Contractor shall be reflected (with a narrative explanation) on the respective Application for Progress Payment for the period during which Contractor makes such allocation and application. Any portion of the Construction Contingency remaining unallocated at Final Completion shall be a credit against and reduce the Guaranteed Maximum Price.

3.1.7 Allowances. The Guaranteed Maximum Price includes specific "*Allowance Amounts*" for certain items as shown on the Schedule of Values and budgeted in the Guaranteed Maximum

Price ("*Allowance Items*"). The only Allowance Items shall be those specifically identified as such in the Schedule of Values and in the Guaranteed Maximum Price. The Allowance Amounts represent all Costs of the Work of the Allowance Items, including, without limitation, costs of materials, labor, handling, transportation, loading and unloading and installation, as determined by Contractor.

3.1.8 Fast Track Drawings and Specifications. As described in *Section 7.3* of this Agreement, the Drawings and Specifications for the Work and Project are not complete. As Drawings and Specifications are completed for a particular portion of the Work (including Allowance Items), Contractor shall to the extent practical propose and obtain bids from a minimum of three Subcontractors and/or Vendors for that portion of the Work and, in accordance with *Section 9.2* hereof, assist Owner in selecting one of the Subcontractor or Vendor bids for that Work.

3.1.8.1 If the amount of the bid selected by Owner exceeds the amount budgeted in the Guaranteed Maximum Price for that item or portion of the Work, including the Allowance Amount as to an Allowance Item, and the increase in cost is due to the failure of the Drawings and Specifications to substantially conform to the "*Guaranteed Maximum Price Premises and Assumptions*" as set forth on *Exhibit G* attached hereto, Owner shall, subject to *Section 3.1.8.3* below, either (a) rework the Drawings and Specifications with Architect and Contractor to cause the Work depicted therein to fall within the budgeted amount allocated in the Guaranteed Maximum Price (or within the Allowance Amount as to an Allowance Item), or (b) if the cost difference is less than $50,000.00 (subject to an aggregate maximum total of $500,000.00), Owner shall be entitled to allocate and apply a portion of the Construction Contingency to such increased cost, or (c) increase the Guaranteed Maximum Price by an amount equal to that portion of the difference between the amount of the selected bid over the amount budgeted for such item or portion of the Work in the Guaranteed Maximum Price (or over the Allowance Amount as to an Allowance Item) that is attributable to the failure of the Drawings and Specifications to substantially conform to the Guaranteed Maximum Price Premises and Assumptions, or (d) apply a portion of the Owner Contingency to cover such increased cost of the selected bid that is attributable to the failure of the Drawings and Specifications to substantially conform to the Guaranteed Maximum Price Premises and Assumptions.

3.1.8.2 If the amount of the bid recommended by Contractor exceeds the amount allocated or budgeted in the Guaranteed Maximum Price for that item or portion of the Work, and the Drawings and Specifications substantially conform to the Guaranteed Maximum Price Premises and Assumptions, then:

(a) if the portion of the Work is not an Allowance Item, Contractor shall perform such Work and such increase in costs shall be solely Contractor's responsibility and Contractor shall not be entitled to, and will not seek, any increase in the Guaranteed Maximum Price (though Contractor shall be entitled to allocate a portion of the Construction Contingency to cover such cost increase if Contractor elects to the extent permitted in accordance with *Section 3.1.6* hereof; provided however, if no funds remain in the Construction Contingency, Contractor shall still be responsible for the increased cost of the Work); or

(b) If the portion of the Work is an Allowance Item, Contractor shall not be responsible for such excess cost of that Allowance Item over the Allowance Amount (subject to *Section 3.1.8.3* hereof), even if the Drawings and Specifications are in substantial conformance with the Guaranteed Maximum Price Premises and Assumptions, and in

such case as to such increased costs Owner will make an election under clauses (a), (b), (c) or (d) of *Section 3.1.8.1* above.

3.1.8.3 Notwithstanding the provisions of *Sections 3.1.8.1* and *3.1.8.2* above, if Contractor failed to comply with its obligations under *Section 7.3* of this Agreement, including to timely notify Owner in writing in accordance with *Section 7.3.5* of this Agreement that the Drawings, Specifications or designs for such item or portion of the Work (including any Allowance Item), failed to substantially conform to the Guaranteed

Maximum Price Premises and Assumptions, or that redesign or value engineering was necessary to bring the cost within or below the amounts allocated in the Guaranteed Maximum Price for such item or portion of the Work, Owner shall not be required to make any election under clause (a), (b), (c) or (d) of *Section 3.1.8.1* above or under *Section 3.1.8.2* above, and Contractor shall perform and be responsible for the increased cost of such Work (though Contractor may utilize a portion of the Construction Contingency to cover such increased costs; provided, however, if no funds remain in the Construction Contingency, Contractor shall still be responsible for the increased costs of such Work) and be estopped from seeking, and Contractor agrees not to seek and shall not be entitled to, any increase in the Guaranteed Maximum Price with regard thereto.

3.1.8.4 If the amount of the bid selected by Owner plus the additional and customary cost to complete the bid Work (if such additional and customary amount is so required as mutually determined between Owner and Contractor) is less than the amount allocated or budgeted in the Guaranteed Maximum Price for that item or portion of the Work, then:

(a) if the portion of the Work is not an Allowance Item, the difference between those amounts shall be allocated to and included within the Construction Contingency; provided, however, if allocating such amounts to the Construction Contingency would cause the amount of the Construction Contingency to exceed $44,987,078.00, then any such excess over the foregoing $44,987,078.00 shall be allocated to the Owner's Contingency; or

(b) if the portion of the Work is an Allowance Item, then such savings and difference shall be allocated to the Owner's Contingency.

3.1.8.5 Notwithstanding the provisions of this *Section 3.1.8*, if Owner elects to have a party other than Contractor, or one of Contractor's Subcontractors, perform the Work related to an Allowance Item or other portion of the Work, or otherwise eliminates or reduces the scope of an Allowance Item or other portion of the Work, the Guaranteed Maximum Price shall be reduced by both (a) the Allowance Amount for any such Allowance Item or the budgeted amount in the Guaranteed Maximum Price for such item, and (b) a portion of the Contractor's Fee in an amount equal to three percent (3%) of the amount by which the aggregate amount of reductions specified in the preceding clause (a) exceed $30,000,000.00, and there shall not be any corresponding increase in the Guaranteed Maximum Price for the cost of such Allowance Item or other portion of the Work not performed by Contractor.

3.1.8.6 (a) Interiors Allocation values set forth in Attachment 2 of *Exhibit F* to the Agreement, were established by Contractor and Owner utilizing historical cost information from representative projects. The Contractor Interiors Allocation values combined with the Owner (WDD) Interiors Allocation values, as set forth in Attachment 2 of *Exhibit F* to the Agreement, provide for the total budgeted value for the interiors of each respective area. It is recognized that these values may require adjustments upon receipt of the final design documents and that a final re-allocation may need to occur for each of the respective areas. Such re-allocations shall not cause the combined Interiors Allocations to exceed the total amount for same identified in *Exhibit F* to the Agreement. In no event shall any re-allocations of the Interior Allocation values pursuant to this Section or otherwise result in an increase to

the total amount of the Interior Allocation values as set forth in column D & E of Attachment 2 of *Exhibit F* to the Agreement.

(b) To the extent any mutually agreed upon re-allocation of the Interior Allocation values between Owner and Contractor with regard to a respective interior area, increases the value allocated to Contractor over the value set forth for Contractor on Attachment 2 to *Exhibit F* to the Agreement, then Owner shall either (i) cause the Guaranteed Maximum Price to correspondingly be increased by an amount equal to the increase in such value allocated to Contractor, or (ii) rework the Drawings and Specifications to cause the respective interior Work to fall within the value originally allocated to Contractor (such that no re-allocation occurs), or (iii) apply a portion of the Owner Contingency to cover such increase in values allocated to Contractor.

(c) To the extent any mutually agreed upon re-allocation of the Interiors Allocation values between Owner and Contractor with regard to a respective interior area, reduces the value allocated to Contractor from the value set forth for Contractor on Attachment 2 to *Exhibit F* to the Agreement, then the Guaranteed Maximum Price shall correspondingly be reduced by an amount equal to the reduction in such value allocated to Contractor.

3.2 Cost of the Work. "*Cost of the Work*" means those elements of costs described in this *Section 3.2* up to the Guaranteed Maximum Price (subject to change only as provided in this Agreement) which are chargeable to Owner and payable to Contractor when reasonably, actually and necessarily incurred by the Contractor during proper performance of the Work, without mark-up or add on of any kind by or at the request of Contractor. Such costs shall be actual costs paid by Contractor less all discounts, rebates and salvages taken by Contractor. All amounts paid or payable as Costs of the Work shall be subject to verification by audit pursuant to Article 19 of this Agreement. Contractor covenants and agrees to use its best efforts to achieve the lowest price or cost reasonably available and consistent with the Contract Documents, for all Cost of the Work items. Costs of the Work shall be strictly limited to and include only the following items:

3.2.1 Contractor's Salaried Employees. Direct cost of amounts actually paid by Contractor for the salaries paid to Contractor's employees (excluding craft labor) while and only to the extent they are performing Work at the Site ("*Personnel*"), except to the extent approved otherwise by Owner, and at the rates set forth on *Exhibit C* attached hereto, including Contractor's actual costs of statutory payroll taxes and customary employee benefits to the extent stated in this *Subsection 3.2.1*, pro-rated for the time they are performing Work at the Site. Contractor shall submit to Owner all documentation necessary to support the referenced rate and benefits. Contractor's costs for bonuses, stock options, profit sharing arrangements and similar incentive programs shall be Non-Allowable Costs of the Work (except for amounts paid by Contractor into 401K plans for its designated Personnel, which amounts shall not exceed 4% of the respective employee's gross salary) and thus included within the Contractor's Fee. Contractor's rates shall exclude any elements of overhead or profit. Any changes to such chargeable personnel listed in *Exhibit C* attached hereto, during the course of the Work must be approved in advance and in writing by Owner. The Contractor shall submit a rate schedule for each of its personnel listed in *Exhibit C* attached hereto, for Owner's audit and approval, including any increases other than increases solely for annual standard cost of living adjustments and merit raises in Contractor's normal and customary practice, but not to exceed five percent (5%) annually, unless approved otherwise by Owner. Costs included in such proposed rates shall, however, be strictly limited to actual payroll costs including actual labor burden, and excluding any element for overhead or profit. Items covered by or included within the labor burden shall not be separately or otherwise included in Costs of the Work or billed to Owner.

3.2.2 Contractor's Site Craft Labor. Direct cost of amounts actually paid for Contractor's craft labor, including actual labor burden. Contractor shall submit hourly rates for both regular time and premium time hours for Owner's review and approval. In no event shall such rates exceed either those hourly rates specified in collective bargaining agreements applicable to such labor, including stated increases, or the amount actually paid by Contractor for such craft labor, unless approved in writing in advance by Owner.

3.2.3 Subcontractor and Vendor Costs. Direct cost of amounts actually paid by Contractor to its Subcontractors and Vendors for Work performed pursuant to subcontracts and purchase orders which have been reviewed and approved in advance and in writing by Owner (except to the extent Owner's prior written consent is not required pursuant to *Section 9.3* of this Agreement).

3.2.4 Materials and Equipment Incorporated in the Work. Direct cost of amounts actually paid by Contractor for all materials and equipment incorporated into the Work by Contractor, including the actual direct costs of transportation and temporary storage (including any materials stored off-Site so long as the requirements of *Section 5.13* of this Agreement are fulfilled to Owner's satisfaction). Contractor shall promptly disclose to Owner all relevant details regarding any such materials, equipment and other items if any of the foregoing is being provided for purchase by Contractor or any company which is a subsidiary or otherwise affiliated with Contractor or its parent company. Said costs shall be invoiced at actual prices, net of any available trade and quantity discounts. Contractor shall use its best efforts to achieve the lowest cost or price reasonably available and consistent with the Contract Documents. Any salvage value received by Contractor or any Subcontractor for any excess items paid for by Owner, to be determined prior to Owner's final payment upon Final Completion, shall reduce the Cost of the Work and be a credit to Owner.

3.2.5 Materials and Equipment Consumed at the Site. Direct cost of amounts actually paid by Contractor for all materials, equipment, supplies and small tools which are provided by Contractor at the Site and fully consumed at the Site during performance of the Work, including the direct costs of transportation and temporary storage on-site or pursuant to *Section 5.13* hereof. Contractor shall promptly disclose to Owner all relevant details regarding any such materials, equipment and other items if any of the foregoing is being provided for purchase by Contractor or any company which is a subsidiary or otherwise affiliated with Contractor or its parent company. Said costs shall be at lowest rates reasonably available and consistent with the Contract Documents and invoiced at actual prices, including any available trade and quantity discounts. Contractor covenants and agrees to use its best efforts to achieve the lowest cost or price reasonably available and consistent with the Contract Documents. Any salvage value for any excess items paid for by Owner, to be determined prior to Owner's final payment upon Completion, shall reduce the Cost of the Work and be a credit to Owner.

3.2.6 Rental Equipment. Direct cost of amounts actually paid by Contractor for rental charges for all necessary construction machinery and equipment utilized at the Site, exclusive of small tools, but limited to the direct costs of transportation, delivery, installation, dismantling, removal, maintenance, and insurance. Contractor shall use its best efforts to achieve the lowest cost or price reasonably available and consistent with the Contract Documents. Contractor shall promptly disclose to Owner all relevant details if any such construction machinery or equipment is being provided, either for purchase or rental, by Contractor or any company which is a subsidiary or otherwise affiliated with Contractor or its parent company. The rental rates for any machinery and equipment owned by Contractor or an affiliated entity shall be agreed upon by Owner and Contractor in advance, and those rates are incorporated into the rate schedule which is attached to this Agreement as *Exhibit D*. Notwithstanding anything to the contrary in *Exhibit D*, the aggregate amount of rental costs charged for any individual piece of Contractor or affiliate-owned machinery or equipment shall be limited to 80% of its actual acquisition cost.

3.2.7 Site Office Costs. Direct cost of amounts actually paid by Contractor for Site office facilities and Site office general expenses, telephone services, long distance telephone calls, photocopying, postage, reasonable and customary petty cash expenses not to exceed $250.00 monthly, facsimile transmissions, office supplies, custom printing required by the Contract Documents, express and air courier mail delivery services, Site office equipment such as computers, telephones, copiers, facsimile machines, typewriters and similar items used in connection with the Work. Contractor shall use its best efforts to achieve the lowest cost or price reasonably available and consistent with the Contract Documents, provided, however, such costs shall be expressly limited to such of the foregoing items not otherwise made available or provided by Owner to Contractor at the Site. Contractor shall promptly advise Owner of any such Site office equipment which is charged to the Work and provide Owner with all purchase and rental agreements pertaining thereto for Owner's approval. Contractor shall promptly disclose to Owner all relevant details if any such Site office equipment is being provided, either for purchase or rental, by Contractor or any company which is a subsidiary or otherwise affiliated with the Contractor or its parent company. Such equipment shall be deemed Contractor owned equipment and a Cost of the Work only in accordance with Contractor's Equipment List attached hereto as *Exhibit D*. Any salvage value received by Contractor or any Subcontractor for any excess items paid for by Owner, to be determined as part of Final Completion, shall be a credit for Owner's account.

3.2.8 Sales and Use Taxes. Direct cost of amounts actually paid by Contractor for sales and use taxes for materials and equipment incorporated or consumed into the Work, plus on rental equipment used in the Work, that are imposed by governmental authorities and paid by the Contractor.

3.2.9 Bond Premiums. Direct cost of amounts actually paid by Contractor for premiums solely attributable to the Work for Contractor's Performance and Payment Bonds to the extent required by Owner, and direct amounts paid for Subcontractor bond premiums.

3.2.10 Course of Constructions Repairs. Actual and reasonable costs incurred and paid by Contractor in repairing minor damage to trade Work caused as a normal by-product during the course of construction and not attributable to the fault of Contractor, any Subcontractor or Vendor or covered by insurance.

3.2.11 Royalties. Royalties and license fees necessarily and reasonably incurred and paid by Contractor for an express design, process or product required by the Contract Documents in accordance with *Section 7.20* hereof.

3.2.12 Other Costs. Other actual direct costs incurred in the performance of the Work, but limited solely to those costs which are approved in writing by Owner.

3.2.13 Miscellaneous Costs. Miscellaneous costs are chargeable as Costs of the Work only as follows:

3.2.13.1 Direct costs actually paid by Contractor for clean-up and removal of debris;

3.2.13.2 Direct costs actually paid to respond to an emergency affecting the safety of persons and property, and not the result of any act or omission of Contractor or any Subcontractor or Vendor or any party for whom any of the foregoing are responsible or liable at law or under the Contract Documents;

3.2.13.3 Direct costs actually paid by Contractor and approved by Owner for Site security services for protection of the Work;

3.2.13.4 Actual costs incurred by Contractor for blueprinting of Drawings as required by the Contract Documents and required postage, express mail and long distance costs in the performance of the Work; and

3.2.13.5 Except for the Major Permits which shall be Owner's responsibility to pay for, direct costs actually paid for building permit fees, including plan check fees, which are required by governmental authorities to be taken out in Owner's name for construction and completion of the Work, including temporary and final Certificates of Occupancy.

3.2.13.6 Direct costs actually paid by Contractor's Personnel reasonably incurred by such Personnel while traveling in the performance of the Work.

3.2.13.7 Losses and expenses not compensated by insurance and incurred by Contractor directly relating to the performance of the Work and not relating to or arising from the failure of Contractor or any Subcontractor or Vendor or any party any of the foregoing are liable or responsible for under the Contract Documents or at law, to comply with the Contract Documents or the negligence of any of the foregoing persons.

3.2.13.8 The cost of insurance premiums for the specific insurance coverages listed on *Exhibit R* carried by Contractor and Subcontractors relating to the Work and costs of insurance pursuant to *Section 15.1.1* hereof, if applicable.

3.3 Non-Allowable Cost of the Work. "*Non-Allowable Cost of the Work*" mean the direct and/or indirect costs described in this *Section 3.3* and all similar costs and all other costs not included within Costs of the Work, which are paid or incurred by Contractor during performance of the Work. All such Non-Allowable Costs of the Work are included in Contractor's Fee set forth in *Subsection 3.1.1* above, regardless of whether they exceed the amount of such Contractor's Fee. Contractor shall not be entitled to receive any additional reimbursement for Non-Allowable Costs of the Work, including without limitation, any of the types of cost items described as follows:

3.3.1 The cost of any item not specifically and expressly included as a Cost of the Work in *Section 3.2* above;

3.3.2 Costs in excess of the Guaranteed Maximum Price;

3.3.3 Salaries and all other compensation of the Contractor's personnel and representatives performing any function at any location whatsoever, except for those Personnel individually named as approved in *Exhibit "C"* attached hereto, and to the extent described therein;

3.3.4 All direct and indirect operating, maintenance and overhead costs of any nature whatsoever arising out of or in any way relating to any of the Contractor's principal or branch offices, including, but not limited to: office space; furniture and equipment which is dedicated to or reserved for use for the Work; leasing and rental costs; maintenance; local telephone; utilities; depreciation; security; office supplies; property taxes; the development of engineering and construction manuals, standards or computer programs; personnel training of any kind; and janitorial services; excepting only those actual and direct costs incurred and permitted to the extent described in *Subsections 3.2.7* and *3.2.13* above;

3.3.5 Any expenses relating to Contractor's operating capital, including interest on the Contractor's capital employed in support of the Work (provided, however, as to interest, only so long as Owner timely pays amounts properly due and owing to Contractor in accordance with and subject to the Contract Documents);

3.3.6 All direct and indirect costs arising out of the fault or negligence of, or failure to comply with the terms of the Contract Documents or any subcontracts by, the Contractor, any Subcontractor or Vendor of any tier or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents;

3.3.7 All direct and indirect costs of any nature relating to work arising during the Warranty Period defined in *Section 10.2* of this Agreement, for correction, removal, replacement or disposal of any non-conforming Work, materials or equipment to the extent defined in Article 10 of this Agreement;

3.3.8 All costs incurred by Contractor for bonuses, stock options, profits sharing arrangements and similar incentive programs (other than as provided in *Section 3.2.1* with regard to 401K plans);

3.3.9 All direct and indirect costs of any nature resulting from or attributable to either delays, disruptions or interferences, excepting only for those costs which are expressly identified and permitted in accordance with Article 11 of this Agreement;

3.3.10 All direct and indirect costs of any nature resulting from or attributable to terminations, cancellations for convenience or suspensions, excepting only for those costs which are expressly identified and permitted in accordance with Article 17 of this Agreement;

3.3.11 Rental costs of Contractor or affiliate owned machinery and equipment, except as specifically provided in *Subsection 3.2.6* of this Agreement;

3.3.12 All costs of business and/or operating permits, licenses, fees and taxes, required by any local, state or federal governmental authorities or labor agreements to enable the Contractor, its Subcontractors or Vendors of any tier to be qualified to do business and/or perform trade activities and/or any Work pursuant to the Contract Documents;

3.3.13 Costs of repairing defective or non-conforming Work or Work damaged by Contractor, Subcontractors, sub-subcontractors, materialmen, anyone directly or indirectly employed by any of them, or for those acts or omissions any of them are responsible or liable at law or under the Contract Documents, except to the extent provided in *Section 3.2.10* hereof;

3.3.14 Costs incurred by Contractor in satisfying its indemnification obligations pursuant to Article 14 of this Agreement or any other Contractor indemnification provision of the Contract Documents;

3.3.15 Payments on account of materials, supplies, and equipment until delivered and suitably stored at the Site for subsequent incorporation or consumption in the Work, except as specifically provided in *Section 5.13* of this Agreement (if, however, in Owner's reasonable opinion, such warehousing and storage costs are due to Contractor caused delays and/or poor sequencing of the Work by Contractor, these costs shall not be considered a Cost of the Work and will be at Contractor's sole cost and expense);

3.3.16 Costs incurred by Contractor relating to the preparation, response to or defense of any Claim for which Contractor or any Subcontractor or Vendor are liable or responsible at law or under the Contract Documents;

3.3.17 Any cost incurred by Contractor relating to a Change in the Work without a Change Order or Construction Change Directive (other than a Minor Change or unless approved otherwise in writing by Owner and Owner's Lenders);

3.3.18 Any Costs of the Work reimbursed by insurance to Contractor or any Subcontractor or Vendor;

3.3.19 The costs of any insurance premiums associated with the Owner's requirement that Contractor and Subcontractors carry insurance coverage beyond that provided by the OCIP (as defined in Article 15 of this Agreement), and the cost of any other insurance maintained by Contractor or any Subcontractor whether or not required by the Contract Documents (except that insurance described in *Section 3.2.13.8* hereof); and

3.3.20 All other direct, indirect and/or overhead costs of any nature whatsoever, except as otherwise expressly provided to the contrary in the Contract Documents.

3.4 Contractor's Responsibility For Taxes. Other than direct cost of amounts actually paid by Contractor for sales and use taxes directly relating to materials and equipment incorporated or consumed into the Work and/or directly relating to rental equipment used in the Work that are imposed by governmental authorities and paid by the Contractor, it is expressly understood that no other taxes or duties (other than customs duties on equipment and material brought into the United States expressly and solely for incorporation or consumption in the Work and imposed by governmental authorities and paid by Contractor) of any nature whatsoever are considered Costs of the Work and that Contractor will not be separately reimbursed for, but Contractor shall be responsible for and shall timely pay, any other such taxes or duties whatsoever, including, but not limited to, federal, state and local taxes, duties, excise taxes, personal property taxes on construction equipment and other property owned or leased by Contractor, taxes on net income of Contractor, filing fees on taxes, business taxes, and similar taxes applicable to or arising directly or indirectly out of performance of the Work or Contractor's property, business or operations.

3.5 Discounts, Rebates and Refunds. All cash discounts (so long as Owner has made payment to Contractor to the extent advance or timely payment is necessary to obtain such cash discount), trade discounts, rebates and refunds obtained by Contractor during the course of the Work, and all amounts received from sales of surplus materials and equipment, shall accrue to Owner. Contractor shall take all necessary steps to obtain, secure and pass on such credits to Owner and all such discounts, rebates and refunds shall be fully reflected in Contractor's monthly Applications for Progress Payment submitted pursuant to Article 5 of this Agreement. Title to all materials, tools, and equipment paid for by Owner shall be vested in Owner. At the completion of the Work and when no longer required, such tools, equipment and materials as remain shall belong to Owner and be, as Owner may direct (a) sold at the direction of Owner and all sums and allowances realized credited against the Cost of the Work for all purposes under this Agreement or (b) delivered to Owner, all as Owner shall direct.

3.6 No Duplication. Notwithstanding the breakdown or categorization of any costs in this Article 3 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

ARTICLE IV.
CONTRACT TIME AND INTERIM MILESTONE DATES

4.1 Definitions.

4.1.1 The term "*day*" means any calendar day including public holidays.

4.1.2 The "*Notice to Proceed*" means the written notice from Owner to Contractor providing Contractor with a "*Date of Commencement*" for the Work.

4.1.3 The term "*Interim Milestone Dates*" means either the fixed dates, or the fixed number of calendar days, available to Contractor to achieve the key schedule "*Interim Milestones*" identified in the Project Schedule.

4.1.4 The term "*Contract Time*" means the period of time between the Date of Commencement and Guaranteed Date of Substantial Completion, available to Contractor to achieve Substantial Completion of the Work in its entirety in accordance with *Section 12.1* of this Agreement.

4.1.5 The term "*Guaranteed Date of Substantial Completion*" shall mean the date which is 910 calendar days from and after the Date of Commencement.

4.2 Time of the Essence. Contractor and Owner acknowledge that TIME IS OF THE ESSENCE with respect to their respective obligations under the Contract Documents, and that Owner's business interests will suffer substantial losses in the event that the Project is not completed within the Interim Milestone Dates and/or the Contract Time in accordance with and subject to the terms of this Agreement. Contractor hereby accepts and confirms that, subject to the terms of this Agreement, the Contract Time is reasonable for completing the Work and hereby agrees to dedicate such personnel and other resources as are necessary to assure that the Work is continuously managed and performed in a diligent, skilled and workmanlike manner. Notwithstanding any other provision of the Contract to the contrary, in the event Owner is unable to obtain financing satisfactory to Owner for the Project and Owner does not issue a Notice to Proceed, Owner shall have the right to terminate the Contract upon written notice to Contractor and such termination shall be treated as a termination for convenience by Owner pursuant to *Section 17.2* hereof and the parties rights and obligations with regard to such termination shall be as provided for in *Section 17.2* hereof. Owner and Contractor expressly intend that the provisions of Section 624 of Nevada Revised Statutes, including without limitation as to contractor and subcontractor remedies in the event of cessation or suspension of construction by an owner, do not apply to such termination by Owner of the Contract. ontractor will not commence or perform any Work prior to the Date of Commencement in Owner's Notice to Proceed.

4.3 Completion Guarantees. Subject to changes in the Contract Time which are mutually agreed to and finalized in accordance with the Contract Documents, Contractor hereby guarantees to cause the Work to be commenced on the Date of Commencement as provided in *Section 4.1.2* hereof, and (a) to timely achieve each of the Interim Milestone Dates, and (b) to timely achieve Substantial Completion of the Work in its entirety in accordance with the requirements of *Section 12.1* of this Agreement on or before the Guaranteed Date of Substantial Completion. Contractor's failure to achieve any of the Interim Milestone Dates or Substantial Completion by the Guaranteed Date of Substantial Completion, except pursuant to mutually agreed schedule extensions which are determined and finalized in Change Orders in accordance with the Contract Documents, shall be a material breach of this Contract and Contractor shall and hereby agrees to indemnify Owner for and against any and all costs, damages, expenses, losses, liabilities and obligations relating to and/or arising out of any such delay(s), provided, however, Contractor's liability to Owner under this Agreement relating to damages arising solely from delays in the Work caused by Contractor or for which Contractor is responsible or liable (as outlined in *Section 4.4* below) shall not exceed the total amount of Nine Million Dollars ($9,000,000.00). The foregoing limitation on liability relating to delays shall not in any way limit Contractor's liability for any other act, omission, breach or default of Contractor, Subcontractor or any Vendor, shall only relate to damages actually suffered by Owner and shall not apply to or in any way limit Contractor's obligation to complete the Work for the Guaranteed Maximum Price, including, but not limited to, Contractor's responsibility for all costs in excess of the Guaranteed Maximum Price pursuant to the Contract Documents, nor shall the foregoing limitation on liability in any way apply to or limit in any way any of Contractor's obligations and covenants under *Section 11.8* hereof, including, without limitation, Contractor's obligation to provide and implement any Recovery Plan and/or take all available steps to overcome or mitigate against the adverse effects of all delays identified by Owner.

4.4 Liquidated Damages. If Substantial Completion of the Work is not achieved by the Guaranteed Date of Substantial Completion, as such time period is adjusted pursuant to the Contract Documents, Contractor acknowledges and agrees that Owner will suffer significant damages. Accordingly, if Substantial Completion of the Work is not achieved by the Guaranteed Date of Substantial Completion, Contractor shall pay to Owner on demand (or, at Owner's option Owner may deduct, withhold and/or set off the whole or any portion of the following liquidated damages amounts

from or against any amounts then or thereafter payable or due to Contractor from Owner), as liquidated damages and not as a penalty, the amount of:

4.4.1 Three Hundred Thousand Dollars ($300,000.00) per day for each day of delay from and after the fifth (5^{th}) day after Guaranteed Date of Substantial Completion until Substantial Completion is achieved, up to a total amount of Nine Million Dollars ($9,000,000.00).

4.4.2 Owner and Contractor hereby agree that it would be impractical or impossible to fix actual damages in the case of Contractor's default of its obligation to cause Substantial Completion to be completed within the Contract Time and also agree to stipulate that Owner's loss in the case of any such default will be deemed equal to the amounts set forth herein as liquidated damages for the specific periods set forth in *Section 4.4.1* above, which amounts both parties agree are reasonable estimates of Owner's actual damages in such event.

4.4.3 Notwithstanding the provisions of this *Section 4.4*, the foregoing liquidated damages shall not apply to or limit in any way any of Contractor's obligations and covenants under *Section 11.8* hereof, including, without limitation, Contractor's obligation to provide and implement any Recovery Plan and/or take all available steps to overcome or mitigate against the adverse effects of all delays identified by Owner.

Contractor's Initials _____ Owner's Initials _____

4.5 Early Completion. If Substantial Completion of the Work is achieved by Contractor prior to the Guaranteed Date of Substantial Completion, as such Guaranteed Date of Substantial Completion may be adjusted pursuant to the Contract Documents, and Contractor has fully and timely performed all of its obligations under the Contract Documents and is not in default or breach thereunder, Contractor shall be entitled to an early completion bonus payment (in addition to Contractor's Fee), to be paid to Contractor concurrently with the Final Payment (as defined in *Section 5.8* hereof), in the amount of $50,000 per day for each day, up to but not to exceed twenty (20) days for a maximum total early completion bonus payment of One Million Dollars ($1,000,000.00), that the Contractor achieves Substantial Completion of the Work in advance of the Guaranteed Date of Substantial Completion. The early completion bonus will only be owed to Contractor if Contractor is able to accelerate the Substantial Completion of the Work without the use of overtime labor funded as Costs of the Work or other increase in the Cost of the Work which is incurred or arranged with the intent to achieve Substantial Completion prior to the Guaranteed Date of Substantial Completion.

4.6 Guaranty of Completion and Performance, and Financial Information.

4.6.1 Guaranty. Concurrent with the mutual execution of this Agreement, Contractor shall cause Austi, Inc. ("*Guarantor*") to execute and deliver to Owner a Continuing Guaranty ("*Guaranty*") in the form of *Exhibit Q* attached hereto, whereby Guarantor absolutely and unconditionally guarantees to Owner each and all of Contractor's obligations under the Agreement, as limited therein, and Contractor shall further cause Guarantor to execute a consent to the assignment of the Guaranty by Contractor to Owner's Lenders.

4.6.2 Financial and Other Information; Indemnification and Contribution.

4.6.2.1 Financial and Other Information. The Contractor and the Guarantor hereby agree, jointly and severally, to prepare and provide, or to cause to be prepared and provided, promptly for inclusion in (i) the registration statements (collectively, the "**Registration Statements**"), any preliminary prospectus or prospectus (or any amendment or supplement thereto) (such preliminary prospectuses and prospectuses, collectively, the "**Prospectuses**") and any preliminary or final offering memorandum or other similar disclosure document (or any amendment or supplement thereto) (collectively, the "**Other Disclosure Documents**") with

respect to the public offerings or private placements of equity or debt securities of an entity to be formed as a parent entity of Valvino Lamore, LLC and/or any parent or subsidiary entities thereof (collectively, the "**Company**"), and (ii) any materials prepared in connection with any senior credit financings of the Company (the "**Financing Materials**"), the audited balance sheets of each of the Contractor and the Guarantor (together, the "**Contractor Parties**") for the most current fiscal year and unaudited balance sheets for the most recent fiscal quarter of each of the Contractor Parties. The Contractor Parties will also provide such information expressly requested in written comments promulgated by the Securities and Exchange Commission (the "**SEC**") (such information, together with the balance sheets described in the preceding sentence, shall hereinafter be referred to as the "**Authorized Information**"). The Contractor Parties will also provide such additional material requested in writing by the Company that is reasonably necessary to provide to the Underwriters, Initial Purchasers, Placement Agents or Lenders (each as hereinafter defined) (such information hereinafter referred to as the "**Other Information**") to effect the financing of the Le Rêve project. Notwithstanding the previous sentence, the Other Information is solely provided for the information of such Underwriters, Initial Purchasers, Placement Agents or Lenders and no representation and warranty is provided regarding the Other Information except as otherwise expressly provided in Section 4.6.2.1(iv) hereof. The Authorized Information and the Other Information are hereinafter referred to collectively as the "**Information**". The Contractor Parties hereby represent and warrant to the Company, jointly and severally, that (i) the financial statements comprising the Authorized Information shall present fairly the financial condition of the Contractor Parties at the dates indicated and, if applicable, the results of the operations of the Contractor Parties for the periods specified and that, since the respective dates as of which the financial statements are given in, and as of the date of, the Registration Statements, Prospectuses, Other Disclosure Documents and/or Financing Materials, there shall have been no material adverse change in the condition, financial or otherwise, or in the earnings, affairs or business prospects of the Contractor Parties, whether or not arising in the ordinary course of business, except as otherwise stated therein, (ii) the financial statements comprising the Authorized Information have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto, (iii) the auditors who have expressed their opinion with respect to the audited financial statements comprising the Authorized Information are independent public or certified public accountants as required by the Securities Act (as defined below) and (iv) the Other Information to be provided pursuant to this Section 4.6.2.1 shall be true and correct in all material respects and shall not contain any untrue statement of a material fact or omit any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

4.6.2.2 Use of Information. The Contractor Parties hereby agree that the Company shall have the right to include the Authorized Information in the Registration Statements, Prospectuses, Other Disclosure Documents and Financing Materials. The Company and its underwriters (including, without limitation, Deutsche Bank Securities, Inc.) (each an "**Underwriter**" and collectively, the "**Underwriters**"), initial purchasers (each an "**Initial Purchaser**" and collectively, the "**Initial Purchasers**"), placement agents (each a "Placement Agent and collectively, the "**Placement Agents**") and senior credit lenders or managing agents (each a "**Lender**" and collectively, the "**Lenders**"), and their respective representatives, shall have the right to investigate the financial condition and results of the operations of the Contractor Parties and the accuracy of the Authorized Information provided pursuant to Section 4.6.2.1; *provided*, *however*, that, notwithstanding such right to investigate such financial condition, results of operations and Authorized Information, each of the Company, the

Underwriters, the Initial Purchasers, the Placement Agents and the Lenders has the right to rely fully upon the Authorized Information provided pursuant to Section 4.6.2.1 and on the representations, warranties, covenants and agreements of the Contractor Parties contained herein. In providing financial statements comprising the Authorized Information for inclusion in the Registration Statements, Other Disclosure Documents and Financing Materials, the Contractor Parties agree, at their expense, to cause their independent accountants promptly to file with the SEC and deliver to the Company, the Underwriters, Initial Purchasers, Placement Agents or Lenders, any written consents of such accountants consenting to the inclusion in the Registration Statements, Other Disclosure Documents and Financing Materials of such financial statements, including the audit report(s) relating thereto, that the Company shall deem necessary or prudent. The Owner will reimburse the Contractor Parties for all costs incurred by them for the preparation of unaudited balance sheets for the most recently ended fiscal quarter of the Contractor Parties.

4.6.2.3 Indemnification by the Owner. The Owner agrees to indemnify and hold harmless (i) the Contractor, (ii) the Guarantor, (iii) each of the directors, officers and employees of the Contractor or the Guarantor and (iv) each person, if any, who controls the Contractor or the Guarantor (each of the Contractor, the Guarantor and such directors, officers and employees and controlling persons, is referred to individually as a "**Owner-Indemnified Party**", and are collectively referred to as the "**Owner-Indemnified Parties**") against any loss, claim, damage, liability or expense as a result of a claim brought by a third party, as incurred, to which a Owner-Indemnified Party may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon the untrue statement or alleged untrue statement of a material fact contained in the Registration Statements, Prospectuses, Other Disclosure Documents or Financing Materials, or arises out of or is based upon the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that the foregoing indemnity shall not affect the Company's ability to seek recovery for any loss, claim, damage, liability or expense incurred by the Company for breaches of the representations and warranties made by the Contractor Parties under Section 4.6.2.1 hereof. Notwithstanding anything to the contrary in this Section 4.6.2, the Owner shall not have any obligation to indemnify any Owner-Indemnified Party with respect to any loss, claim, damage, liability or expense as a result of a claim brought by any accountant of any Owner-Indemnified Party, to which a Owner-Indemnified Party may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise.

4.6.2.4 Notifications and Other Indemnification Procedures. Each indemnified party shall give written notice to each indemnifying party promptly after such indemnified party has actual knowledge of any claim as to which indemnity may be sought; *provided*, *however*, that the failure of any indemnified party so to notify any indemnifying party will not relieve any indemnifying party from any liability which it may have to any indemnified party under this Section 4.6.2, except to the extent that the indemnifying party's ability to defend against such action is actually and materially prejudiced as a proximate result of such failure. In case any such action is brought against an indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party shall assume the defense thereof and the indemnified party shall have no right to conduct the defense thereof. Upon the indemnifying party's assumption of the defense of such action, the indemnifying party will not be liable to such indemnified party under this Section 4.6.2 for any legal or

other expenses subsequently incurred by such indemnified party in connection with the defense thereof.

4.6.2.5 Further Assurances; Cooperation.

(a) **Contractor Parties**. Each Contractor Party hereby agrees that, at any time and from time to time after the date hereof, it shall execute and deliver such documents and instruments and take such other actions as the Company may reasonably request in order to confirm such Contractor Party's obligations and representations and warranties under Section 4.6.2 to the Company.

(b) **Owner**. The Owner hereby agrees that, at any time and from time to time after the date hereof, it shall execute and deliver such documents and instruments and take such other actions as the Contractor may reasonably request in order to confirm the Owner's obligations under this Section 4.6.2 to the Contractor directly.

4.6.2.6 No Effect on Construction Contract Obligations. The parties to this Agreement acknowledge and agree that this Section 4.6.2 shall not affect any other cause of action that any party may have under this Agreement.

ARTICLE V.
PAYMENTS TO CONTRACTOR

In consideration of Contractor's performance of the Work in full compliance with the Contract Documents, Owner shall pay Contractor over the course of and in proportion to the Work completed as follows:

5.1 Schedule of Values. Within twenty-one (21) calendar days after the Date of Commencement for the Work, Contractor shall submit to Owner and Owner's Lenders an initial "*Schedule of Values*" for the Work, allocating values among all categories or portions of the Work. The Schedule of Values shall be prepared in such form and supported by data to substantiate its accuracy to the extent as Owner may require, shall be based upon the latest cost information available to Contractor, and shall be subject to Owner's approval which approval shall not be unreasonably delayed. By way of example and not by limitation, the Schedule of Values should include and delineate: (a) each subcontract and major component thereof; (b) each significant purchase order and the installation costs for all procured materials and equipment, so that logical and realistic cost breakdowns are established and set forth for all facilities, phases, areas, trade disciplines, utility and electrical systems, FF&E items and major components thereof. The Owner accepted Schedule of Values shall be used as a basis for the Contractor's Applications For Progress Payments described in *Section 5.2* below. Owner shall have the right to reject all or any portion of the Schedule of Values which Owner determines does not accurately define the Work in reasonable detail, or if the detail provided does not accurately reflect an appropriate cost, allocation or proportion of the Work. At any time and from time to time if it reasonably appears to Owner that any aspect of the Schedule of Values is incomplete or inaccurate, and following any Change Order or Construction Change Directive, the Schedule of Values shall be adjusted by Contractor, in each case subject to Owner's written approval, to reflect accurately the values of the various portions of the Work.

5.2 Applications For Progress Payments.

5.2.1 Format of Applications

5.2.1.1 On or before the first (1^{st}) day of each month, Contractor shall submit to Owner and Owner's Lenders an initial draft of Contractor's Application for Progress Payment for the previous month.

5.2.1.2 On or before the fifth (5^{th}) day of each month, Contractor shall submit to Owner and Owner's Lenders a fully completed Application For Progress Payment for the previous month in a format reasonably satisfactory to Owner and supported by such documentation to verify entitlement as Owner and Owner's Lenders may reasonably require, and certified by Contractor as correct. Each Application for Progress Payment shall be sequentially numbered, and shall clearly identify, itemize and attribute all Costs of the Work in a manner which facilitates review by Owner. Such Applications for Progress Payment may only request payment for Costs of the Work actually incurred prior to the date of such Application for Progress Payment and may not include requests for payment of amounts Contractor does not intend to pay promptly to a Subcontractor or Vendor because of a dispute or other reason. Contractor shall not submit more than one Application for Progress Payment per month, unless otherwise requested by Owner. In addition, each Application for Progress Payment shall separately identify and itemize the following:

(a) Work performed during such preceding calendar month.

(b) Amounts due for Contractor's initial scope of Work satisfactorily completed during the preceding month as measured by the Contractor's direct and actual costs incurred in accordance with the Cost of the Work described in *Section 3.2* of this Agreement, a list of all bills for supplies, materials, equipment, and fixtures incorporated in the Work (in detail reasonably sufficient to allow Owner to determine where each item is incorporated) and labor performed (in detail reasonably sufficient to allow Owner to determine where and on what portion of the Work the labor was performed, including, but not limited to, weekly labor payrolls

with names, dates, hours and rates) in connection with the Work, together with copies of the actual bills to be paid.

(c) For each category and portion of the Work as shown on the Schedule of Values: (1) the amount requested on all previous Applications for Progress Payment, (2) the amount requested on the current Application for Progress Payment, and (3) the amount allocated to the Work yet to be completed.

(d) The percentage completion of each portion of the Work as of the end of the period covered by the Application for Progress Payment, shown as the percentage obtained by dividing (a) the expense which has actually been incurred by Contractor on account of that portion of the Work for which Contractor has made or intends to make actual payment prior to the next Application for Progress Payment, by (b) the amount allocated to that portion of the Work in the Schedule of Values.

(e) Amounts due which are attributable to the Contractor's Fee earned as a result of the completion of Contractor's scope of Work during such period covered by and included in the Application for Progress and approved by Owner. Under no circumstances shall Contractor include in any Application for Progress Payment, nor shall Owner be required to pay, an Application for Progress Payment for funds to pay an amount in excess of the then applicable pro rata portion of the Contractor's Fee, using the ratio that the portion of the Work then completed bears to the total Work (as determined by the total Costs of the Work disbursed to date compared to the total approved Costs of the Work amount on the Schedule of Values).

(f) For all amounts due as the result of Change Orders and Construction Change Directives, the Contractor shall make submittals for each Change Order and Construction Change Directive.

(g) Reflect Retainage in the amount provided for pursuant to *Section 5.6* of this Agreement.

(h) Such additional information and documentation regarding the progress of the Work as Owner or Owner's Lenders may reasonably require.

5.2.2 Substantiation of Costs. Contractor shall support its Applications For Progress Payment with relevant documentary evidence for cost verification purposes as Owner and Owner's Lenders may reasonably require. This obligation shall include providing Owner with such supporting documentation as necessary to enable Owner to verify Costs of the Work submitted pursuant to *Section 3.2* of this Agreement, including any Costs of the Work attributable to Change Orders or Construction Change Directives. To the extent requested by Owner, this shall include providing audit access to Contractor's books and records to the extent described in Article 19 of this Agreement. All blanks and columns in the Application for Progress Payment must be completed. Except with Owner's prior written consent pursuant to *Sections 5.11* and *5.13* of this Agreement, Contractor shall not make advance payments to suppliers and shall not be entitled to reimbursement for the cost of any equipment or materials which have not been delivered and incorporated into the Project or stored at the Site.

5.2.3 Additional Costs For Change Orders and Claims. Except for Construction Change Directives which specify additional Costs of the Work are to be paid, or pursuant to an Owner signed Change Order, Owner shall not have any obligation to pay any amounts to Contractor or any Subcontractor or Vendor for work outside the scope of Contractor's Work.

5.2.4 Lien Waivers. Each Application for Progress Payment shall include signed and acknowledged (by a notary) Conditional Waivers and Releases of Lien Upon Progress Payment in the form attached hereto as *Exhibit H* from Contractor and each Subcontractor, and each Vendor with regard to Work that is covered on the Application for Progress or Final Payment, and signed and acknowledged (by a notary) Unconditional Waivers and Releases of Liens Upon Progress Payment in the form attached hereto as *Exhibit I* from Contractor and each Subcontractor, and each Vendor with regard to Work that was covered by the immediately preceding Application for Progress Payment. Owner's receipt of such executed and acknowledged waivers shall be a condition precedent to Owner's obligation to pay any amounts pertaining thereto. Notwithstanding the foregoing, and subject to all other terms of this Agreement, to the extent Contractor fails to provide any of the foregoing waivers and releases of lien when required ("Outstanding Releases"), Contractor shall provide to Owner's and Owner's Lenders' title insurers, from time to time upon Owner's request and as a condition to any progress or other payment to Contractor, such affidavits, indemnities, certificates and other instruments as such title insurers require to issue to Owner and Owner's Lenders, as a condition to any progress or other payment to Contractor, one or more indorsements to their respective title insurance policies insuring the lien free status of the Work and Site (Contractor's failure to cause the title insurer to provide the required indorsement(s) shall be a breach of this Agreement); provided, however, that at no time shall the aggregate of all Outstanding Releases represent Work with an aggregate value in excess of $1,000,000. In addition, Owner may at any time direct Contractor to submit an affidavit that all payrolls, invoices for material and equipment, and other indebtedness connected with the Work and associated with an Application For Progress Payment have been paid.

5.2.5 Certificates. Each Application for Progress Payment (and for Final Payment) shall include a "*Contractor's Certificate*," in form and substance identical to *Exhibit J* attached to this Agreement, signed by Contractor.

5.3 Time of Payments. Subject to the terms of the Contract Documents, Owner shall make to Contractor progress payments properly due and undisputed based on an approved Application for Progress Payment within twenty (20) calendar days after receipt of such fully completed Applications

For Progress Payment which are submitted along with all requirements under *Section 5.2* above, and substantiated in accordance with *Subsection 5.2.2* above, and otherwise reasonably satisfactory to and approved by Owner and Owner's Lenders, less any amounts that may be retained or withheld pursuant to the Contract Documents. This *Section 5.3* shall constitute a "schedule for payments" as described in Section 624.609(1)(a) of Nevada Revised Statutes.

5.4 Owner's Right To Withhold. Notwithstanding anything to the contrary herein, and in addition to Retainage, Owner may, upon written notice to Contractor, withhold from any payments otherwise due to the Contractor (including Final Payment), up to one hundred percent (100%) of the amount which, in Owner's opinion, is necessary to protect Owner against or compensate Owner for any and all damages, costs, lawsuits claims, overpayments, expenses and losses attributable to any of the items or circumstances listed below in this *Section 5.4*, including, to cure any breach, default or failure to perform, or to assure the payment of claims of third persons, and at Owner's option to apply such sums in such manner as Owner may in good faith deem necessary or proper to secure

protection from or to satisfy such claims, Owner shall not be deemed in default by reason of withholding payment under this Agreement in good faith. Contractor shall not be entitled to receive payment on any Application for Progress Payment that is inaccurate or incomplete or that contains any material misrepresentation. The rights and remedies of Owner under this *Section 5.4* shall be non-exclusive and shall be in addition to all other remedies available to Owner under this Agreement or at law, in equity or otherwise.

5.4.1 The overall percentage of Work satisfactorily completed by Contractor and each relevant Subcontractor and/or Vendor (determined by comparing the amount of Work satisfactorily completed to the total amount of Work to be completed), is less than the overall percentage of payments determined by comparing (i) the sum of (a) all amounts previously paid by Owner; and (b) the pending invoice to be paid, to (ii) the total amount of the Cost of the Work within the Guaranteed Maximum Price.

5.4.2 Contractor's failure to perform the Work in accordance with the Contract Documents, including, without limitation, failing to comply with any applicable Laws, failure to submit or carry out Recovery Plans in accordance with *Section 11.8* of this Agreement, and/or failure to maintain insurance in compliance with the requirements of this Agreement.

5.4.3 Defective Work not remedied in a timely manner after receipt of notice from Owner during the course of the Work or during the Warranty Period, as applicable. If any Work inspected by Owner is not to Owner's reasonable satisfaction in accordance with the Contract Documents, a condition of any additional payments to Contractor shall be the correction of any such unsatisfactory Work to Owner's reasonable satisfaction in accordance with the Contract Documents.

5.4.4 Reasonable evidence of the failure by Contractor to make timely or properly due payments to Subcontractors or Vendors.

5.4.5 Contractor's failure to submit lien waivers as required pursuant to *Subsection 5.2.4* above.

5.4.6 The filing by Contractor or any Subcontractor or Vendor of mechanic's liens or other claims relating to the Work against Owner, the premises of Owner, the Project and/or the Site, or the making or filing of any claim by any other party arising out of or relating to the Work or acts or omissions of Contractor, any Subcontractor or any other person for whose acts Contractor is responsible or liable at law or under the Contract Documents, except for those liens filed as a result of Owner's failure to make payment when due to Contractor under the Contract.

5.4.7 Contractor's failure expeditiously to remove mechanic's liens filed against the premises of Owner and/or the Site by Contractor or any Subcontractor or Vendor, except for those liens filed as a result of Owner's failure to make payment when due to Contractor under the Contract.

5.4.8 The existence of Work, including Punch List Items, not fully completed or corrected after either Substantial or Final Completion.

5.4.9 Any failure by the Contractor to provide timely access to the Contractor's books and records for audit purposes to the extent described in Article 19 of this Agreement.

5.4.10 Any failure by Contractor to provide the Schedule Updates as required by Article 11 of this Agreement or failure to submit Applications For Progress Payments consistent with the Schedule of Values.

5.4.11 Owner's or Owner's Lenders' good faith belief based on reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price.

5.4.12 Regarding any particular portion of the Work as shown on the Schedule of Values, any amount requested that is attributable to a portion of the Work not actually completed.

5.4.13 Owner's or Owner's Lenders' good faith belief based on reasonable evidence that the Work will not be completed within the Contract Time.

5.4.14 Damage to property or Work or injury to persons attributable to the acts or omissions of Contractor, any Subcontractor or any person for whose acts or omissions Contractor is responsible or liable at law or under the Contract Documents.

5.4.15 Deviations from the Contract Documents other than those approved or permitted in accordance with the Agreement without an applicable Change Order or Construction Change Directive.

5.4.16 Any material breach or default or failure to perform by Contractor under the Contract Documents, including without limitation failure to maintain any required insurance, or any material inaccuracy in any of Contractor's representations or warranties.

5.4.17 A determination by Owner to nullify in whole or in part a prior approval of an Application for Progress Payment and/or prior payment made, because of subsequently discovered evidence or subsequent observations which otherwise would allow Owner to withhold pursuant to this *Section 5.4* or elsewhere in the Contract Documents.

5.4.18 Owner's Lenders' inability (if not the fault of Owner) to obtain (1) one or more title insurance endorsements to the Owner's Lender's title policy, showing no intervening or other liens, lien rights or encumbrances upon the Site or any improvements relating to the whole or any portion of the Work prior to any Lender Liens (as defined in *Section 24.2* of this Agreement), other than those approved in writing by Owner's Lender, and insuring the full amount of the disbursement and its priority satisfactory to Owner and Owner's Lenders, or (2) a satisfactory report under the Nevada Uniform Commercial Code showing no liens or interests (other than those of Owner's Lenders) relating to the whole or any portion of the Work, including, without limitation, any improvements; or any failure of Contractor or any Subcontractor to comply with *Section 24.2* of this Agreement.

5.4.19 Contractor's failure to obtain, comply with and keep valid and in full force, and deliver copies to Owner of, all approvals, permits, certifications, consents and licenses of governmental authorities or other parties having jurisdiction over the Site, the Project or the Work or contractual rights to approve or inspect any of the foregoing which are necessary at the stage of construction and/or otherwise existing and required to be complied with or satisfied when such disbursement to Contractor is to be made to enable Final Completion on or before the Contract Time.

5.4.20 It shall be a condition precedent to all payments to Contractor following the date that certificates of occupancy (or any other equivalent permits required for occupancy and use) are obtainable for the whole or any part of the Project prior to Final Completion, that Contractor obtain and deliver to Owner all such permits when they are first available to be obtained (unless due to the fault of Owner such certificates are not obtainable).

5.4.21 Encroachments by any part of the Work being constructed on the Site outside the boundaries of the Site.

5.4.22 An order or statement shall have been made by or received from any governmental, administrative or regulatory authority or agency stating that the whole or any part of the Work, and/or any proposed change thereto, for which Contractor or any Subcontractor is responsible or which relates to Contractor's or any Subcontractor's activities is in violation of any Laws (as defined in *Section 7.2* hereof), unless such order or statement has been timely corrected to the satisfaction of both the applicable governmental agency and Owner and evidence of such timely correction shall have been provided to Owner in form and substance satisfactory to Owner.

5.4.23 The existence of Disputed Claim Amounts (as defined in the Contractor's Certificate) in excess of $75,000.00, in the aggregate on any one Application For Progress Payment.

5.4.24 Contractor's failure to comply with the requirements of *Section 5.13* of this Agreement relating to off-Site materials.

5.5 Joint Payee Checks. Owner shall have the right at any time and from time to time upon notice to Contractor, to issue one or more checks for portions of a progress payment and Final Payment which are payable jointly to Contractor and its Subcontractors or Vendors of any tier or the parties owed. This right includes, but is not limited to, issuing jointly payable checks in circumstances where a dispute exists between Owner and Contractor with respect to the value of any partially or fully completed Work, including disputed Change Proposal Requests and Claims, and circumstances where Contractor has failed to provide lien waiver documents as required herein. Any such checks are forwarded to Contractor for further handling. Without limiting the generality of the foregoing, if Contractor fails, neglects, or refuses to pay for labor or services performed or materials or equipment supplied in connection with the Work as payments become due, except as are permitted under the Contract Documents, Owner shall have the right (but not the obligation) to make payments directly for any and all such labor, materials, or equipment and to deduct the amount of such payment from any payments otherwise due Contractor and from the Guaranteed Maximum Price. Owner shall have the right upon five (5) days prior written notice to stop the performance of the Work by Contractor until payment of all amounts due and owing has been made, provided, however, Owner shall not have any duty to stop the Work.

5.6 Retention. From each Progress Payment made by Owner on an approved Application for Progress Payment, Owner shall retain and withhold as "*Retainage*," ten percent (10%) of the approved amounts to be paid to all Subcontractors (whether through Contractor or directly). Notwithstanding the foregoing, no Retainage shall apply to (a) Contractor's Fee, (b) premiums for Contractor's Payment and Performance Bonds required of Contractor pursuant to the Contract, or (c) approved amounts to be paid to Contractor for Contractor's direct Costs of the Work (exclusive of amounts to be paid to Subcontractors directly or through Contractor). All such Retainage shall be released as part of the Final Payment to Contractor. After fifty percent (50%) of the scope of the Work has been satisfactorily completed, Owner may elect to reduce the level of Retainage withholding in the event that Owner, in its sole discretion, determines that Contractor, its Subcontractors and/or Vendors are satisfactorily performing the Work in accordance with the Contract Documents, including but not limited to, achieving Interim Milestones Dates.

5.7 Substantial Completion Payment. Payment by Owner upon Substantial Completion shall be in consideration of Contractor's unconditional covenant and agreement to complete all final Punch List Items. Owner may retain a sum equal to one hundred and fifty percent (150%) of the costs estimated by Owner necessary to complete any such Punch List Items. Thereafter, Owner shall pay to the Contractor monthly the amounts retained for such Punch List Items to the extent that each Punch List Item is satisfactorily completed by Contractor and accepted by Owner.

5.8 Final Payment. Contractor's "*Application For Final Payment*" shall be submitted in accordance with the following:

5.8.1 "*Final Payment*" shall mean the payment to Contractor of all amounts due and owing and remaining to be paid to Contractor under the Contract Documents, including any Retainage, based on Contractor's Application for Final Payment and Owner's Certificate of Final Completion. Final Payment shall not be due, and Contractor's Application for Final Payment shall not be considered, until the Contractor completes all of the Work in accordance with the Contract Documents including all prerequisites for a Certificate of Final Completion pursuant to *Section 12.2* of this Agreement.

5.8.2 Owner will have no obligation to make the Final Payment as long as any unresolved mechanic's liens or claims exist relating to Owner's property, the Site or the Project, regardless of whether such liens or claims are filed or made by Contractor, any Subcontractor or Vendor or any other party relating to the Work; unless and until as directed by Owner, Contractor obtains and records appropriate lien releases acceptable to Owner and Owner's Lenders, or provides Owner and Owner's Lenders with indemnities acceptable to Owner and Owner's Lenders and/or bonds around any mechanic's lien in a manner acceptable to Owner and Owner's Lenders, all in accordance with *Section 7.19* hereof.

5.8.3 The Application For Final Payment shall include a statement of all unresolved Claims as defined in Article 20 of this Agreement (and for which payment has been and/or shall be withheld by Owner). Contractor shall separately list by Claim number the specific dollar amounts which have previously been submitted as Claims by Contractor in good faith and in full compliance by Contractor with this Agreement.

5.8.4 Except for such unresolved Claims stated in specific dollar amounts which have been previously filed by Contractor in good faith and in full compliance with this Agreement, the submittal by Contractor of its Application For Final Payment shall constitute a final and irrevocable release and waiver by Contractor of any and all other Claims and causes of action for additional costs allowable under the Contract Documents. This shall include, but not be limited to, any and all claims for additional amounts relating to the Unresolved Claims so identified by Contractor and Claims or potential claims of Subcontractors and Vendors arising out of this Contract, whether or not any such Claims or potential Claims arise in contract or in tort or were known or unknown at the time of submittal of the Application For Final Payment.

5.8.5 Upon Owner's concurrence that all conditions listed in *Section 12.2* of this Agreement have been fulfilled and that the balance set forth in the Application For Final Payment is due and payable, Owner shall make Final Payment to Contractor in accordance with *Section 5.3* of this Agreement.

5.8.6 Final Payment shall not relieve Contractor of any warranty obligations (including, without limitation, warranty obligations) contained in the Contract Documents or at law.

5.8.7 The making of Final Payment by Owner shall constitute Owners acceptance of the Work and shall be a waiver of Claims by Owner under the Contract Documents, except to the extent of any conditions or reservations and/or Claims set forth in writing by Owner at or prior to the time of Final Payment, and except to the extent of any claims relating to any of the following,

whether known or unknown at the time of Final Payment (i) any liens or encumbrances, (ii) any matter for which Contractor or any Subcontractor or Vendor is liable or responsible at law, (iii) any obligations or liability relating to Contractor's warranties provided in the Contract Documents (including Contractor's obligations under Article 10 hereof), (iv) Contractor's representations, warranties and obligations under *Sections 3.4, 3.6, 4.6.2, 7.2 (a)&(g), 7.2.1, 7.2.11, 7.2.12, 7.20, 13.2.3, 14.1.1, 14.2, 14.3 (last sentence), 14.4, 16.2, 24.7, and Articles 19 and 23* of this Agreement, (v) failure of the Work to comply with the Contract Documents, or (vi) any breach or inaccuracy of any of Contractor's representations or warranties under the Contract Documents, any Contractor Certificate or under any affidavit, certificate or other instrument or document provided to Owner or any of Owner's Lenders.

5.9 Disputed Payments. When the reason(s) for withholding payment are removed to Owner's reasonable satisfaction, Owner will pay such previously withheld amounts (less amounts properly withheld or retained) with the next regularly scheduled payment. In the event of a dispute with respect to amounts payable under an Application For Progress Payment or the Final Payment, Owner shall pay all undisputed amounts. If Contractor disputes any determination by Owner with regard to any Application for Progress Payment or any withheld amounts, Contractor shall nevertheless expeditiously continue to prosecute the Work. Any amounts in dispute and withheld by Owner shall be promptly paid after the earlier of: (a) settlement of the dispute by execution of a final Change Order document; or (b) final resolution of the dispute pursuant to Article 22 of this Agreement. The payment of any undisputed amounts shall not waive or otherwise limit Owner's rights as set forth in this Agreement, including, but not limited to, in Article 19 below.

5.10 Ownership of Materials. All material and work covered by progress payments made shall upon such payment become the sole property of Owner, however the Contractor shall not be relieved from the risk of loss and responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work (Contractor's risk of loss, however, shall be subject to the terms and provisions of the OCIP). Contractor represents and warrants to Owner that (i) title to all of the Work, materials and equipment covered by any Application for Progress Payment will pass to Owner upon the earlier of incorporation in the Work or receipt of payment by Contractor, and such title shall be free and clear of all liens, claims, security interests or encumbrances; (ii) the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract Documents; (iii) Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in this Agreement (Contractor's risk of loss, however, shall be subject to the terms and provisions of the OCIP); and (iv) no Work covered by an Application for Progress Payment and no material or equipment incorporated in the Work will have been acquired or incorporated into the Work, subject to an agreement under which an interest in the Work or an encumbrance on the Work is retained by the seller or otherwise imposed by Contractor or such other person.

5.11 Deposits and Payments. If any deposits are required for the purchase of any materials, such deposits will be specifically identified by category and credited against amounts as billed in that category. Contractor agrees to receive and hold all payments to it by Owner as trust funds to be applied only to the payment of Costs of the Work and then to the payment of the Contractor's Fee. Contractor will, promptly upon written request from Owner, account for any and all funds theretofore received by Contractor from Owner. Contractor agrees to arrange to purchase such materials or equipment in advance of the time for installation in the Project as are deemed advisable by Owner or Contractor, provided such purchases in excess of $200,000.00 are approved by Owner and Owner's Lenders. Upon payment to Contractor of approved deposit amounts, Contractor shall provide Owner with an assignment of Contractor's rights relating to such deposit made and agreement for purchase of such item.

5.12 Waiver. Owner's allowance or payment of any item pursuant to any Application for Progress Payment or otherwise shall not constitute approval of the Work or the Application for Progress Payment, or result in Owner's waiver of any claims, all of Owner's rights being specifically reserved, and no such payments shall operate as an admission on the part of Owner as to the propriety or accuracy of any amounts on such Application for Progress or Final Payment (except Final Payment shall constitute a waiver by Owner only to the extent provided in *Section 5.8.7* hereof). A progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. Owner shall not be bound by any entries in previous Applications for Progress Payment and shall be permitted to make corrections for errors therein. Owner's Final Contractor's Fee installment payment and Final Payment shall in no way relieve Contractor of any obligations or responsibilities under the Construction Documents which extend beyond the date of such payment.

5.13 Materials Off-Site. All materials which are the subject of an Application for Progress Payment (or Application for Final Payment, if applicable) shall be stored at all times at the Project, in a bonded warehouse or such other secured facility satisfactory to Owner and Owner's Lenders, or at the premises of the manufacturer or fabricator (in which event the materials shall be appropriately marked and identified with the applicable purchase contract and physically segregated in an area with access to a public street), until the materials are incorporated into the Project; provided that if the materials are stored with the manufacturer or fabricator, Owner must receive evidence satisfactory to Owner of the creditworthiness of the manufacturer or fabricator and/or Contractor shall procure and deliver or cause to be procured and delivered to Owner such dual obligee performance and labor and material payment bond or bonds, in form, substance and amount satisfactory to Owner and Owner's Lenders, as Owner and Owner's Lenders may require. Furthermore, Contractor shall:

5.13.1.1 use the materials only for construction of the Project, and not make any transfer thereof or permit any lien to attach thereto which could materially impair the ability of Owner to use the materials for such purpose;

5.13.1.2 take or cause to be taken all actions necessary to maintain, preserve and protect the materials and keep them in good condition and repair, and to comply with all laws, regulations and ordinances relating to the ownership, storage or use of the materials;

5.13.1.3 cause to be delivered to Owner any applicable bailee waivers where such bailee rights exists, and the original warehouse receipt covering any stored materials, and ensure that such stored materials have been stored in such a way as to eliminate the possibility that they will be

commingled with other materials or projects; and

5.13.1.4 if Contractor shall fail to perform any of its obligations under this *Section 5.13* after Owner has made payment to Contractor for the materials, Owner or Owner's Lender may, but shall not be obligated to, take such actions and expend such sums as are necessary in Owner's judgment to protect and preserve Owner's Lenders' security interest in such materials, and all such expenditures so incurred (including, without limitation, attorneys' fees and disbursements) shall be repayable by Contractor promptly on demand and shall be Non-Allowable Costs of the Work.

ARTICLE VI.
OWNER'S RESPONSIBILITIES

6.1 Information and Services. Owner shall, at such times as are reasonably required for the successful and expeditious completion of the Work, provide Contractor with information and services at Owner's expense as follows:

6.1.1 Purchase and deliver to Contractor in accordance with the Project Schedule (and after timely and due notice from Contractor to Owner of a schedule of delivery dates for such items), the material and equipment to be provided by Owner for installation by the Contractor;

6.1.2 Owner has already provided to Contractor surveys describing physical characteristics of the Site including the location of known utility pipelines and wiring conduits; and Owner will continue to provide Contractor with copies of subsequent surveys of the Site as they become available;

6.1.3 Pay for (a) utility connection fees, and (b) alterations to existing structures at the Site required by governmental authorities as a pre-condition of issuing building permits for the Work;

6.1.4 To the extent described in *Section 7.11.2* below, pay for on-Site and off-Site testing, inspections and approvals specifically required for the Work by applicable Laws;

6.1.5 Pay for all Major Permits for the Work (though it is Contractor's obligation to obtain, so long as Owner pays for such Major Permits) subject to *Section 1.12* hereof;

6.1.6 Pay for all necessary construction utilities at the Site; and

6.1.7 Pay all real property taxes assessed against the Work.

6.2 Limitations. Information on the Site and local conditions affecting the Site and any and all other information, reports, studies, surveys and materials provided by Owner pursuant to *Section 6.1.2* above or otherwise, is furnished solely for the convenience of Contractor only, and without any representation, warranty or guarantee of accuracy, adequacy, correctness or completeness by Owner and Owner hereby disclaims all such warranties, guarantees and representations. Except to the extent set forth in Article 13 below, and except to the extent the information and materials supplied by Owner contain inaccurate information that was not known to Contractor to be inaccurate (and such inaccuracy would not have been reasonably discovered by Contractor in the exercise and/or performance of its obligations under the Contract Documents), Contractor assumes the risk of such conditions and shall fully complete the Work at no additional cost to Owner and within the Contract Time (subject to Contractor's right to use the Construction Contingency as provided in *Section 3.1.6* hereof, to the extent there remain funds therein, and regardless of whether any funds remain in the Construction Contingency, Contractor shall still be liable for such costs).

6.3 Project Representative. Owner has designated Todd Nisbet and Kenn Wynn, each as its "*Project Representative*" to be Owner's authorized representative (either acting alone) to provide approvals and directives necessary for the day-to-day administration of the Project, including the Work. Contractor acknowledges and confirms that no apparent authority, agency or similar claims may be made by Contractor with respect to any approval, authorization, order or decision given or made from and after the execution date of this Agreement by any purported representative or employee of Owner other than either of Owner's Project Representatives in writing (or such other individual authorized in writing by Owner), and all such claims are hereby waived by Contractor.

6.4 Approval of Major Purchases. Notwithstanding anything in the Contract Documents which may indicate otherwise, all purchase orders in excess of $250,000.00 for the supply by Contractor of materials and equipment specified in the Contract Documents for incorporation into the Work shall require the prior written approval of Owner.

6.5 Site Access. Owner, Owner's Lenders, Architect and any party designated in writing by Owner shall at all times have, and Contractor shall provide, complete and unfettered access to the Site and the Work in progress and preparation wherever located at all times for any and all purposes as Owner and/or Owner's Lenders may desire. Visits to the Site or observations of the Work by Owner, Architect, any party designated by Owner, Owner's representatives or contractors, or Owner's Lenders shall in no way relieve Contractor from its obligations to carry out the Work in accordance with the Contract Documents. Subject to the terms of the Contract Documents, Owner and Owner's other contractors shall work without causing labor disharmony, coordination difficulties, delays, disruptions or interferences with Contractor, Subcontractors and Vendors.

6.6 Payments. Owner shall timely make payment to Contractor of amounts properly due Contractor under and subject to (including Owner's right to offset and withhold as provided in) the Contract Documents.

6.7 Proof of Funding. Upon Contractor's request, and subject to availability to Owner and the rights of Owner's Lenders, Owner will provide to Contractor a copy of the loan commitment and loan disbursement agreement between Owner and Owner's Lenders relating to the provision and disbursement of funds to Owner for its obligations under this Contract (excluding therefrom information deemed proprietary or confidential by Owner or Owner's Lenders).

6.8 Good Faith. Owner shall use good faith in performing its obligations under the Contract Documents, and shall not unreasonably delay its review of and/or response to matters requiring Owner's review and/or response under the Contract Documents.

6.9 Timely Delivery of Drawings. Owner acknowledges and agrees that to maintain the Project Schedule and the Guaranteed Maximum Price, subject to any allowed extensions and/or increases, the Drawings and Specifications need to be consistent with the Guaranteed Maximum Price Premises and Assumptions and delivered by Owner within the terms required in the Project Schedule. Contractor acknowledges and agrees that the (i) Drawings and Specifications issued through May 6, 2002 and labeled "Le Rêve Highrise," and (ii) Drawings and Specifications issued through May 13, 2002 and labeled "Le Rêve Lowrise-Area 1" previously provided to Contractor, comply with the Guaranteed Maximum Price Premises and Assumptions.

ARTICLE VII.
CONTRACTOR'S RESPONSIBILITIES

7.1 Contractor's Specific Representations. By entering into this Contract, Contractor undertakes to furnish its best skill and judgment and to cooperate with Owner in furthering the best interests of Owner, the Work and the Project, and shall use good faith in performing its obligations under the Contract Documents. By entering into this Contract, Owner is relying upon the specific undertakings, representations and warranties of the Contractor in favor of Owner as follows, and Contractor hereby represents, warrants and covenants to Owner that:

7.1.1 Contractor and all Subcontractors are duly authorized and have the necessary license(s) to practice and perform all Work in this jurisdiction and will remain so licensed at all times relevant to the Work and Project. Contractor shall produce such license(s) to the Owner upon request, and Contractor shall be responsible to obtain copies of such license(s) from all Subcontractors prior to allowing them to perform Work on Site. Contractor has substantial experience in performing major projects with scopes of work similar to the Work defined herein, is familiar with the activities of the governmental bodies having authority over the Project and has expertise and experience managing Subcontractors on projects of similar scope within the Las Vegas, Nevada area. Contractor also represents that such experience includes performing major projects with stringent time constraints and where construction begins before all drawings and

specifications have been issued for construction purposes, as is the case with the Work and Project. The standard by which Contractor shall be judged in its performance of this Agreement and its exercise of judgement hereunder shall be that of a contractor with the highest level of skill, experience and expertise for the planning and construction of a first class luxury resort and casino on the strip in Las Vegas, Nevada, including the foregoing qualifications and consistent with such other Contractor representations, warranties and covenants contained in the Contract Documents.

7.1.2 All of Contractor's management and Site supervisory personnel listed in *Exhibit C* attached to this Agreement shall remain until Substantial Completion committed to and available for full-time assignments devoted to the Work unless otherwise specifically noted in *Exhibit C* attached to this Agreement or as agreed upon by Owner (subject to Contractor's right to terminate the employment of personnel for cause in the ordinary course of business).

7.1.3 Contractor has examined and will continue to examine all Contract Documents provided by Owner and the Architect pertaining to the Work and the Site. Contractor fully accepts the lack of completeness of such documents, including the Drawings and Specifications, except to the extent otherwise reasonably and promptly noted in writing to Owner in accordance with *Section 7.3* hereof as to any specific concerns about incompleteness and consistent with Contractor's obligations and representations in this Agreement so long as any such Drawings and Specifications delivered after the Effective Date are (a) delivered timely in accordance with the Project Schedule and (b) in substantial conformance with the Guaranteed Maximum Price Premises and Assumptions. Contractor also represents that the Guaranteed Maximum Price Premises and Assumptions were sufficiently detailed and comprehensive to enable Contractor to have reliably estimated and established its Guaranteed Maximum Price set forth in Article 3 of this Agreement. Subject to the provisions of this Agreement, Contractor further agrees that all Work shall be performed within the Guaranteed Maximum Price and within the Contract Time set forth in Article 4 of this Agreement, notwithstanding that the Contract Documents, including the Drawings and Specifications, are not complete in every detail and are still being developed.

7.1.4 Contractor has had ample time to and has visited and examined the Site and has reviewed the physical conditions affecting the Work, and will continue to do all of the foregoing, and, subject to the provisions of Article 13 hereof, is familiar with all of the conditions on, under, and affecting the Site, as Contractor deemed necessary or desirable based on Contractor's skill, experience and knowledge and the scope of the Work and terms of the Contract Documents. Contractor has verified field conditions, and carefully and fully compared such field conditions, Site observations and other information known to Contractor with the Contract Documents (including the requirements thereof) and has not found any omissions, errors or discrepancies and has satisfied and will continue to satisfy itself as to: (a) access thereto; (b) the location of all utility pipelines and wiring conduits which can be ascertained through Site visits or by any documents which are provided by Owner; (c) the type of equipment and facilities needed before and during prosecution of the Work; (d) the general and local labor and weather conditions and availability of materials and equipment under which the Work is to be performed; (e) the presence of construction hazards, if any; (f) the nature, location, and character of the Work and the Site, including, without limitation, all improvements and obstructions on and under the Site both natural and man-made; and (g) all other matters which may affect the Contractor's means, methods, techniques and procedures necessary to construct the Work in strict accordance with the Contract Documents and otherwise fulfill its obligations under the Contract Documents, including but not limited to its obligation to complete the Work for an amount not in excess of the Guaranteed Maximum Price on or before the Contract Time. Any condition at the Site, whether or not consistent with conditions shown or called for on the Contract Documents, shall not be allowed as a basis for claims for extra compensation or extensions of time, except as otherwise specifically provided for in Article 13 below, notwithstanding any statements or representations by Owner or

any party on behalf of Owner, oral or written, with respect to the conditions of the Site or improvements thereon, or regarding the completeness, correctness, or adequacy of any Contract Documents, except to the extent provided in *Section 7.1.3* hereof

7.1.5 Prior to commencing its procurement and construction activities, Contractor shall further verify at the Site all measurements and levels necessary for proper construction of the Work, including the fabrication, assembly and installation of materials and equipment to be incorporated into the Work and shall further carefully compare such verified field measurements and conditions with the requirements of the Contract Documents.

7.1.6 If the Contractor observes any failure of the Contract Documents to conform with applicable Laws (as defined in *Section 7.2* of this Agreement), Contractor shall immediately notify Owner in writing and identify any such discrepancies and obtain written instructions from Owner before proceeding with any part of the Work affected thereby. If the Contractor performs Work that it knows or reasonably should have known to be contrary to Laws, the Contractor shall assume full responsibility for such Work and shall bear all costs (including loss and damage due to delays) of correction, repair and replacement attributable thereto as Non-Allowable Costs of the Work.

7.1.7 If Contractor discovers or otherwise becomes aware of any errors, discrepancies, omissions, duplications or conflicts in the Contract Documents at any time during the course of the Work, Contractor shall immediately notify Owner in writing and obtain written instructions from Owner before proceeding with any part of the Work affected thereby. If the Contractor performs any Work relating to any such errors, discrepancies, omissions, duplications in the Contract Documents, Contractor shall bear all costs of correction and adverse scheduling impacts attributable thereto as Non-Allowable Costs of the Work.

7.1.8 Contractor will not engage in, nor commit its personnel to engage in, any other projects while performing Work on the Project to any extent that such other projects may materially and adversely affect the quality or efficiency of the Work required to be performed by Contractor in connection with this Project or which will otherwise be detrimental to the carrying on and completion of this Project.

7.2 General Description. Contractor covenants and agrees that Contractor's Work and all Work performed by any Subcontractor or Vendor shall be carried out: (a) with a proper supply of labor, materials and equipment; (b) in full compliance with the requirements contained in, indicated on and reasonably inferable from the Contract Documents given Contractor's status as a contractor experienced with construction projects similar in size and complexity to the Work, (c) in full compliance with all applicable laws, consents, ordinances, mitigation measures, codes, rules, directives, orders, permits, statutes, and regulations, whether federal, State or local, and whether governmental or public administrative (collectively, "*Laws*"); (d) diligently and in the best manner to assure completion on or before the Guaranteed Date of Substantial Completion, (e) in full compliance with the "*Technical Studies and Reports*" set forth on *Exhibit K* attached to this Agreement, (f) by qualified design professionals where applicable, and (g) in full compliance with the terms of the OCIP (as defined in *Section 15.1* of this Agreement) and any other insurance applicable to the Work. The term Laws shall also include, without limitation, those specific permits, approvals and entitlements set forth on *Exhibit L* attached to this Agreement. Except to the extent provided otherwise in this Agreement, including, without limitation, *Section 7.3* below, Contractor shall not be responsible for whether the design aspects of the Drawings or Specifications conform to Laws applicable to the design aspects of the Drawings or Specifications (including but not limited to ADA design requirements). Applicable Laws shall supersede the Contract Documents if there is any conflict; provided, however, that if any applicable Laws shall necessitate a Change to or deviation from the Contract Documents, Contractor shall obtain Owner's written consent prior to implementing that Change. Contractor shall be

responsible for failing to report any discrepancy between the Contract Documents and applicable Laws of which Contractor knows or should have reasonably known in the exercise of due diligence and prudent judgement and consistent with the terms of the Contract Documents. If Contractor performs any part of the Work in violation of any such applicable Laws, Contractor shall bear all costs of correction and adverse scheduling impacts as Non-Allowable Costs of the Work. Should any governmental authority having jurisdiction over the Work mandate compliance with any changes to applicable Laws or Laws that have been enacted after Work has commenced, Contractor shall, subject to consultation with and written approval by Owner, construct the Work in accordance with such applicable Laws, the cost of which will be a Modification. In fulfilling its responsibilities under the Contract Documents, Contractor shall furnish, coordinate, manage and pay for all services and personnel, labor, machinery, tools, materials, necessary to:

7.2.1 Cause the Work to be constructed in compliance with: (a) the latest approved Drawings and Specifications for construction purposes; and (b) all applicable Laws (including all changes in Laws as provided in *Section 7.2* above);

7.2.2 Provide at all times until Final Completion a sufficient and competent organization, which shall include the skilled services of all senior managers, Site supervisors, qualified scheduling personnel, superintendents, foremen, engineers, skilled and unskilled craft labor and supervisors and all other personnel necessary or desirable to plan, prosecute and construct the Work in accordance with the Contract Documents;

7.2.3 Provide the skilled services of buyers, expediters and other personnel necessary to achieve the timely delivery and use of (a) all materials, supplies and equipment to be incorporated into the Work by Contractor, Subcontractors and Vendors, and (b) all construction machinery and equipment, tools and expendable construction materials and supplies necessary or desirable for the Work;

7.2.4 Prepare and provide the Project Schedule and Schedule Updates for the Work in accordance with Article 11 below;

7.2.5 Coordinate the schedules and operations of all Subcontractors and Vendors of every tier and cooperate with Owner and Owner's other contractors and consultants and Owner's Lenders so that the Contractor's Work and the work of others will progress smoothly with a minimum of disruptions and interference to any party;

7.2.6 Except as provided in *Section 6.1.5* above, obtain and provide to Owner, and pay for (as a Cost of the Work): (a) all Work-related authorizations, building permits, licenses and approvals which are required by governmental authorities to be taken out in Owner's name for construction and completion of the Work or the Project, and (b) all temporary and final Certificates of Occupancy;

7.2.7 Be responsible for protection of the Work, including all materials and equipment to be utilized during the Work, from theft or damage or other harm, whether in transit or in storage on-Site or off-Site, until Final Completion pursuant to *Section 12.2* of this Agreement;

7.2.8 Promptly notify Owner in writing of any errors, omissions or discrepancies discovered by Contractor in the Contract Documents, including any observed failures to comply with applicable Laws;

7.2.9 Enforce strict discipline and good order among the employees of Contractor, Subcontractors and Vendors while at the Site or otherwise performing this Contract;

7.2.10 Give all notices and secure all required certificates of inspection, testing or approval necessary or incidental to the prosecution of the Work, for delivery to Owner;

7.2.11 Be responsible for and pay (as a Cost of the Work to the extent provided in *Section 3.4* hereof) all sales, use, gross receipts, social security, workers' compensation (except to the extent provided in the OCIP), unemployment and all other such taxes relating to or arising out of the Contractor's performance of the Work;

7.2.12 Provide Owner with the full benefit of all Vendor's warranties applicable to all equipment and materials furnished by the Contractor;

7.2.13 Maintain at the Site one record copy of all Drawings, Specifications and revisions thereto, the Project Schedule, all Schedule Updates, all Change Orders and other Modifications, approved material lists, brochures, technical data submissions and RFI's, RFI responses, submittals, Construction Change Directives, Samples, all correspondence and transmittals pertaining to the Work and all other records relating to the status of all Work-related materials, equipment and construction activities;

7.2.14 Provide Owner with three (3) complete sets of operating and maintenance manuals for all equipment installed as part of the Work;

7.2.15 Provide Owner with as-built drawings (electronically when available and otherwise on reproducible mylar) prior to Final Payment after the completion by each Subcontractor of their respective portions of the Work, including at least one printed set with each Subcontractor's stamp and certification statement on such Drawing, as submitted, are true and correct;

7.2.16 Copy Owner on all correspondence, memoranda and bulletins by Contractor to Architect, consultants and public agencies and deliver to Owner on a current and up-to-date basis copies of all written communications received from public agencies. Provide to all Subcontractors (with concurrent written notice to Owner), and cause all Subcontractors to provide, all notices required by applicable Laws relating to the Contract and/or Work, including but not limited to notice of payments received. Copy Owner on all default, stop work or termination notices sent to or received from Subcontractors at every tier, and any others performing any Work;

7.2.17 Contractor shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer to Owner's and Owner's Lender's satisfaction; and

7.2.18 Perry Eiman and Glenn Kaiser are each acting alone authorized to act on behalf of Contractor with regard to the Work and Contract Documents, and are the individuals, acting alone or together, with whom Owner may consult at all reasonable times, and the instructions, requests and decisions of either of said individuals, acting alone, will be binding upon Contractor as to all matters pertaining to this Contract and the performance of the parties hereunder. The individuals who shall be responsible on behalf of Contractor for supervising the Project are set forth on Contractor's Personnel List attached as *Exhibit C* to this Agreement. Except for reasons beyond its control, Contractor shall not change the individuals designated on said *Exhibit C* during the term of this Agreement without the prior written approval or direction of Owner. At least one Project Superintendent shall be at the Site on a full-time basis and at all times while any Work is being performed.

7.3 Preconstruction Services. Contractor shall as a Cost of the Work furnish, coordinate, manage and pay for all services, personnel, labor, material, equipment, machinery and tools for the Work, and shall:

7.3.1 Search for and timely recommend from time to time to Owner various value engineering and other cost savings measures during the entire progress of the Work to reduce the Cost of the Work to the fullest extent possible while maintaining the quality required by the

Contract Documents. Owner will then elect, in its sole discretion, whether or not to implement such measures in connection with the Work.

7.3.2 Timely review designs with Owner and Architect, including, but not limited to, to the extent applicable, architectural designs, structural, HVAC, plumbing, fire protection, power and lighting, security systems and communications, interior designs, and vertical transportation to assure compliance with the Guaranteed Maximum Price, Guaranteed Maximum Price Premises and Assumptions, and Project requirements. Advise on the Site use and improvements, selection of materials, Project and Site systems and equipment, improvements to the Project and Site, call and security systems, and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, integration into existing Project and Site systems, and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economics.

7.3.3 Advise Owner in writing promptly upon discovery if, in the judgment of Contractor, the issuance of architectural or engineering documents does not meet schedule requirements or if the information provided on such documents is inadequate for the current purposes intended or if requirements of such documents conflict with other documents issued or with existing conditions on the Site. In any such event, Contractor will issue a Request for Information ("*RFI*") to the Architect (with a copy to Owner).

7.3.4 Review the Contract Documents, as the same are being prepared and check the same for (a) obvious conflicts, discrepancies and omissions, and (b) variations from customary construction practices and methods which, in the opinion of Contractor, may cause difficulties or occasion delay in the performance of the Work and timely advise Owner and the Architect promptly, in writing, of any such observed problems. Coordinate Contract Documents by consulting with Owner and the Architect regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedule. Timely advise Owner, using Contractor's professional skill and judgment, regarding any missing or incomplete aspects of the Project scope.

7.3.5 Contractor also expressly acknowledges that this Project and the Work will proceed on a "fast-track" method of construction, i.e., construction will commence without final Drawings and Specifications in place. More specifically, while Drawings and Specifications are complete for certain portions of Work, the design process will continue for other portions during construction based on the Guaranteed Maximum Price Premises and Assumptions. Contractor has been, and will continue to be, an active participant in the design process. Given such participation, Contractor represents that it is familiar with the scope and quality of those aspects of the Project which have not yet been fully designed, and has taken such scope and quality matters into consideration in preparing each component of the Guaranteed Maximum Price based on the Guaranteed Maximum Price Premises and Assumptions. Contractor agrees to work with Owner and Architect and their consultants in the completion of the design process and will provide prompt written notice to Owner in accordance with the time periods contained in the Project Schedule, if any proposed Drawings, Specifications or designs being prepared by Owner or Architect and provided to Contractor are not in substantial compliance with the Guaranteed Maximum Price Premises and Assumptions, or if

any redesign or value engineering is necessary or advisable for certain aspects of the Project at any stage of the design process in order to bring the cost of such Work within or below, but not in excess of, the respective Allowance Amounts for the Allowance Items or the budgeted or allocated amounts for other items contained in the Guaranteed Maximum Price. Once the Drawings and Specifications are complete, it is recognized by both parties that the scope of the Guaranteed Maximum Price may include Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract

Documents, and such Work shall be performed without any increase in the Guaranteed Maximum Price or extension of Contract Time, except if and to the extent otherwise expressly provided in this Agreement.

7.3.6 Assist Owner and/or Architect as they may request in the bidding preparation process and solicitation and requests for bids and review of bids received.

7.4 Systems and Procedures. Contractor shall develop, for Owner's review and approval, and implement a system and procedures for:

7.4.1 Reviewing its own Work and the Work of its Subcontractors and Vendors for defects and deficiencies, including the preparation of all appropriate quality control documentation, to assure that all such defects and deficiencies are discovered and corrected.

7.4.2 Reviewing, processing, recording and paying Subcontractors and Vendors which is fully consistent with the requirements to be fulfilled by the Contractor pursuant to Article 9 of this Agreement. Such procedures shall especially provide for strict adherence to all lien waiver requirements for Subcontractors and Vendors as set forth in Article 9 of this Agreement.

7.4.3 Preparing, reviewing and processing Change Orders which fully complies with Article 18 of this Agreement.

7.4.4 Evaluating all Change Proposal Requests and Claims submitted by Subcontractors or Vendors for compliance with the requirements of the Contract Documents, recommending resolutions and options to Owner in writing with respect to such Change Proposal Request and Claims; and implementing of written Construction Change Directives and Change Orders issued in accordance herewith.

7.5 Schedule Meetings and Records. After execution of the Contract and prior to commencement of the Work, Owner shall schedule a meeting with Contractor for the purpose of outlining and clarifying the proposed Work, security and use of the Site, potentially difficult aspects of the Work of which Owner is actually aware and responding to questions of those attending.

7.5.1 Contractor shall schedule and conduct pre-construction and construction progress meetings at the Site on a regular basis (at least weekly) at which Owner, Architect, Interior Designer, Contractor and Subcontractors may jointly discuss such matters as Work procedures, progress, scheduling and coordination, and Owner's Lender may attend. Contractor shall be responsible for securing attendance of its Subcontractors, Vendors, suppliers and other personnel as are required at such meetings. Contractor shall keep and distribute timely in advance of the next meeting minutes of such meetings, including a list of the action items, responsible parties and dates necessary to complete actions to enable the Contractor to maintain the progress of the Work in accordance with the Project Schedule.

7.5.2 Contractor shall regularly monitor and provide to Owner and Owner's Lenders written reports on a monthly basis describing the status of the actual progress of the Work in relation to the Project Schedule, in accordance with Article 11 below.

7.5.3 For purposes of Schedule Updates and requested changes in the Contract Time, Contractor shall maintain daily logs which shall be available for Owner's and Owner's Lenders review at any time during normal working hours, and which shall record the progress of the Work.

7.5.4 Contractor shall also monthly provide to Owner and Owner's Lenders, on the first day of each month, an Anticipated Cost Report prepared by Contractor and containing detailed information on pending Change Orders, contracts awarded and to be awarded, and similar budget related items.

7.6 Contractor's Operations. Contractor shall: (a) confine its operations at the Site to areas designated by Owner; (b) not unreasonably encumber the Site or encumber areas in the vicinity of the Site with materials, equipment or debris; (c) coordinate its activities with the Owner's Project Representative and Owner's other contractors in advance; and (d) not block or hinder public parking facilities without Owner's prior written approval. To the extent reasonably possible, Contractor shall preserve and protect all existing vegetation on or adjacent to the Site which is not to be removed or required to be disturbed in the performance of the Work. Contractor shall be solely responsible for all costs and expenses incurred as a result of failure to adhere to the requirement of this Section (subject to Contractor's right to use the Construction Contingency as provided in *Section 3.1.6* hereof, to the extent there remain funds therein and regardless of whether any funds remain in the Construction Contingency, Contractor shall still be liable for such damages, costs and expenses). Contractor shall make itself familiar with and use all best efforts to protect all existing improvements and/or utilities at or near the Site from damage. Contractor shall be solely responsible for repairing any such damage and for the related costs and expenses (subject to Contractor's right to use the Construction Contingency as provided in *Section 3.1.6* hereof, to the extent there remain funds therein and regardless of whether any funds remain in the Construction Contingency, Contractor shall still be liable for such damages, costs and expenses). Neither Contractor nor any Subcontractor or Vendor shall post, erect or place on the Site, the Work, Owner's premises or the Project any sign, banner, billboard or display for marketing, advertising, promotional or other similar reasons, and no trade names or other identification shall appear on any item of the Work or at any place on the Project where such name or identification will be seen by the general public, except as approved in writing by Owner.

7.7 Site Discipline. Contractor shall employ, and require all Subcontractors and Vendors to employ, only skilled workers properly qualified by experience and ability to perform the tasks assigned to them. Contractor shall at all times be responsible for strict discipline and good order among its employees, craft labor, agents and representatives as well as the employees, craft labor, agents and representatives of its Subcontractors and Vendors while performing Work and all other persons performing any Work. When requested by Owner, Contractor shall remove and shall not re-assign to the Work any person who, in Owner's reasonable opinion, is disorderly, insubordinate, unsafe, unskilled, incompetent or otherwise unfit for tasks assigned to them.

7.7.1 At all times during performance of the Work on the Project, including during any partial use or occupancy by Owner or others, Contractor shall, and shall cause all Subcontractors and Vendors to, abide by each and all of the following requirements:

7.7.1.1 Access to the Project Work area by construction personnel shall be the most inconspicuous route available, in order that the general public and the Owner's personnel are not inconvenienced. Access shall be arranged with Owner prior to commencement of Work. Access to restricted and/or limited access areas required by Work shall be coordinated with Owner.

7.7.1.2 Owner's toilet facilities and the Project's permanent toilet facilities are not to be used by construction personnel.

7.7.1.3 During the FF&E and finish phase of construction, construction personnel are not permitted to eat and smoke where materials are in place nor use tables and chairs or other furniture that are part of the Project. During this phase of the Project, Owner will designate appropriate places for eating.

7.7.1.4 Quiet and courtesy with respect to Owner's employees and guests is mandatory.

7.7.1.5 Use all best efforts to insure that Contractor's and all Subcontractors' activities do not interfere with any Project and Site systems (i.e., electric, elevator, plumbing, HVAC, etc.) necessary to maintain ongoing operations of the Project and Site.

7.7.1.6 Power outages, mechanical shutdown and so forth shall be carefully coordinated with Owner. Contractor will provide Owner with two (2) full business days, advance notice of any planned shutdowns of any basic Project or Site systems, and will obtain Owner's written approval prior to commencing any such shutdown.

7.7.1.7 All life safety systems requiring shut-down or tie-ins, in accordance with the above clause 7.7.1.6, shall be coordinated with Owner and shall be performed at such a time to minimize any effect of the safety, health and welfare of the building's occupants. At the conclusion of each work-day, all operable life safety systems shall be energized and operative.

7.7.1.8 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees and agents, Subcontractors and Vendors and their respective agents and employees, and other persons performing portions of the Work under a contract or arrangement with or under the direction of Contractor or with or under the direction of any Subcontractor or Vendor. Except to the extent expressly provided otherwise in this Agreement, Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of Owner or Architect, or, by any request, approval or consent of Owner or Architect, or by tests, inspections or approvals required or performed by persons other than Contractor. Contractor shall require and ensure that each Subcontractor and Vendor complies with all applicable requirements set forth in the Contract Documents for Contractor. Except to the extent the Contract Documents expressly provide otherwise, if any dispute arises between Owner, on the one hand, and Contractor, on the other hand, unless Owner directs otherwise, Contractor shall proceed with the performance of its obligations under the Contract with reservation of all rights and remedies it may have under and subject to the terms of the Contract Documents.

7.8 Site Security. In cooperation with Owner, Contractor shall develop and implement an effective security program for protection of the Work in progress. Contractor shall secure, protect and be responsible for (consistent with the terms of the OCIP), and shall provide all necessary or desirable measures for security and protection at and on the Site and the Work, and of all materials, supplies, tools and equipment and all other improvements and personal property at the Site or in the vicinity of the Site, whether or not incorporated into the Work, including, but not limited to, utilizing fences, gates, cameras, and patrols. Provided, however, Contractor shall not be responsible for securing those portions of the Site under the control of the other contractor constructing the separate parking garage portion of the Project. Contractor shall bear the cost of, and be liable for as a Non-Allowable Cost of the Work (subject to *Section 3.2* hereof), and promptly shall remedy, all loss and damage to any Work, tools, equipment and all other improvements and personal property of the Site from any cause whatsoever, except to the extent of loss or damage caused by Owner's negligence or willful misconduct or by the negligence or willful misconduct of Owner's separate contractors and their agents and employees (subject to Contractor's obligations under the Contract Documents to coordinate and monitor the work of such other Owner contractors). Owner may elect to provide and/or maintain security (including patrol guards) of its own choosing for the whole or portions of the Work and/or Site and/or adjacent property, but Owner shall not have any obligation, responsibility or liability of any kind to any party whether or not Owner arranges for any security. Such Owner arranged or provided security shall in no event release Contractor from or diminish any of Contractor's obligations under the Contract Documents, including without limitation this *Section 7.8*, and solely Contractor shall be responsible for security at and of the Work and Site, regardless of any security arranged for by Owner. Owner shall not assume or incur any responsibility or liability relating to any security arranged by Owner. Contractor shall cooperate with Owner's security personnel and shall comply with all requests made by such personnel to secure and protect the Work and the Site.

7.9 Coordination With Others. Contractor acknowledges that Owner reserves the right to engage other contractors, engineers, inspectors, consultants and/or its own personnel to provide work or

services relating to the Project which may be carried out concurrently with Contractor's Work. Specifically, and without limitation, Contractor acknowledges that FF&E procurement and installation (except as expressly provided on *Exhibit F* attached hereto as to installation) is excluded from Contractor's Work but completion of same within the times set forth on the agreed upon Project Schedule is necessary to achieve Substantial Completion as defined in *Section 12.1* below, and that a portion of Contractor's Work will include installing materials and equipment in the Project procured by Owner and provided by Owner to Contractor. Owner shall retain separate contractors and vendors for FF&E procurement and installation as Owner desires; provided, however, upon Owner's request Contractor agrees to cooperate with Owner, including joint purchase arrangements, with respect to purchases of materials, supplies and equipment, including FF&E, where such cooperation and joint purchase may lead to a savings in purchase costs relating to such items as determined by Owner. Contractor shall fully cooperate by coordinating its Work with any work or services being performed by Owner and Owner's other contractors, engineers, inspectors and consultants as follows:

7.9.1 Contractor shall coordinate its construction activities with the activities of Owner and Owner's other contractors, engineers, inspectors and consultants and provide the necessary personnel and services to coordinate and interface its Work with Owner's activities at the proper time and in a manner not to delay others or increase costs.

7.9.2 Contractor shall provide Owner and Owner's other contractors with opportunities for the necessary storage and handling of materials and equipment necessary for execution of their activities.

7.9.3 Contractor shall participate with Owner and Owner's other contractors in reviewing their respective construction schedules when requested to do so. Contractor acknowledges that the time allowed for Substantial Completion of the Work includes the time necessary to coordinate and schedule the work of Owner's other contractors and consultants.

7.9.4 At its own expense as a Non-Allowable Cost of the Work, Contractor shall promptly remedy any damages wrongfully caused by Contractor or any Subcontractor or Vendor to Owner's existing property or completed or partially completed construction work performed by Owner or Owner's other contractors, engineers, inspectors and consultants.

7.9.5 If any part of the Work depends upon proper execution of any completed work and services performed or otherwise provided by or on behalf of Owner, Contractor shall, prior to proceeding with its Work, inspect such work and promptly report to Owner any apparent discrepancies or defects in Owner's activities. The failure of Contractor to examine and report any such apparent discrepancies which are or should have been reasonably apparent to Contractor in the exercise of due diligence and prudent judgement and consistent with the terms of the Contract Documents shall bar any Claims thereafter that any defects or delays in Contractor's Work are due to defects, delays or disruptions in the activities performed or otherwise provided by Owner.

7.9.6 Contractor and its Subcontractors and Vendors shall use all best efforts to work without causing labor disharmony, coordination difficulties, delays, disruptions, impairment of guarantees or interferences of any other obligations of any of Owner's other contractors, engineers, inspectors and consultants.

7.9.7 Contractor shall cooperate with Owner's contractors, engineers, inspectors and vendors performing FF&E procurement and installation services and shall incorporate such services in its Project Schedule and provide vertical transportation for the timely installation of FF&E. Contractor agrees to cause the Work to be performed in such a manner so that prior to achievement of Substantial Completion (and as early as reasonably practicable), Owner will have access to the Site and the Project in order to (a) begin installing FF&E, the installation of which is not part of the Work except as otherwise provided in the Contract Documents, at the Site, (b) begin training its personnel at the Site, and (c) and perform other tasks Owner deems necessary in connection with the opening of the Project, including without limitation to allow and provide for early occupancy and use of the Aqua Theatre as set forth on *Exhibit B* to this Agreement, and Owner will use all best efforts to avoid unreasonably interfering with Contractor's Work while conducting the activities in clauses (a), (b) and (c) of this Section.

7.10 Product and Design Substitutions

7.10.1 All requests for Substitutions shall be made in writing and sufficiently in advance of Work performance needs to permit a reasonable time for evaluation and written response by Owner without jeopardizing the Contract Time.

7.10.2 The acceptance of any Substitutions shall be at Owner's sole discretion.

7.10.3 All Substitutions, including design changes recommended by the Contractor, must be specifically accepted in writing by Owner prior to the use or implementation thereof by Contractor or any Subcontractor.

7.10.4 In reviewing any Substitution, including design changes, Owner may consider, without limitation, the comparative advantages and responsibilities, including, but not limited to: (a) any and all additional costs pertaining to any redesign and adverse consequences of such redesign, (b) any and all costs of replacement, corrections or adjustments to the Work, adjoining Work and Owner's existing property, and (c) any and all costs arising from adverse impacts to the critical path of the Project Schedule and/or any delays in the Contract Time arising out of such Substitution.

7.10.5 Contractor shall promptly notify Owner and Architect in writing if any items in the Contract Documents shall not be readily available, and Owner shall have the right to designate an available substitute item. Nothing in this Section or elsewhere in the Contract Documents shall derogate from Contractor's responsibility to select, order, and timely purchase such items. If Contractor does not timely order or arrange for delivery of items or materials required for the Work, Owner may (but is not obligated to) arrange for delivery or order such items and materials and in such event Contractor shall not be entitled to any Contractor's Fee on such items and the Guaranteed Maximum Price shall be reduced by (a) the cost of such items and materials arranged for or ordered and paid for by Owner and (b) that portion of Contractor's Fee applicable to the amounts in the immediately preceding clause (a).

7.11 Tests and Inspections

7.11.1 All on-Site and off-Site material testing and inspections required by the Contract Documents or by laws, rules, regulations, ordinances or orders of public authorities having jurisdiction, shall be arranged and supervised by Contractor in a timely manner to avoid any delays in the Work.

7.11.2 Owner shall pay for all required third party quality control testing and inspections, and the costs thereof shall not be part of the Guaranteed Maximum Price.

7.11.3 Owner may elect to require additional testing and inspections at any time during the course of the Work and for a period of one (1) year after the date of issuance of the Certificate of

Substantial Completion for the Work as a whole pursuant to *Section 12.1* below. Such additional testing shall be at Owner's expense unless such testing discloses deficiencies not discovered during initial testing. In event deficiencies are disclosed, Contractor shall be responsible for all costs of such additional testing and inspections. Contractor's responsibility with respect to the costs of additional tests and inspections shall survive any termination of the Contract.

7.11.4 All certificates of such testing, inspection or approvals issued by all independent testing companies or governmental authorities shall be promptly delivered to Owner.

7.11.5 No inspection, or failure to inspect, by Owner or the independent testing companies or Owner's Lenders shall be construed as approval or acceptance of the Work or as a waiver of Contractor's obligations to perform the Work in full compliance with the Contract Documents.

7.12 Access to Stored Material. Owner and Owner's Lenders may enter upon the location where any material or equipment is manufactured or stored for purposes of inspection, checking, testing or for any other purpose Owner or Owner's Lenders deem reasonably necessary.

7.13 Shop Drawings, Product Data and Samples

7.13.1 "*Shop Drawings*" are drawings, diagrams, schedules and other data specially prepared for the Work by Contractor, its Subcontractors or Vendors of any tier to illustrate how certain specific Work components fit together and will be located in relation to each other.

7.13.2 "*Product Data*" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor, its Subcontractors or Vendor of any tier to illustrate materials or equipment to be utilized for a portion of the Work.

7.13.3 "*Samples*" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

7.13.4 Contractor shall timely prepare and submit for approval a schedule of Shop Drawings, Product Data, test reports, Samples etc., required to be submitted for the Work, in a format acceptable to Owner and Architect.

7.13.5 Contractor shall review, approve (to the extent of their conformance to the Contract Documents) and submit to Owner or Architect or the appropriate consultant all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the schedule therefor with promptness and in such sequence as to cause no delays in the Work or in the activities of Owner or its other contractors.

7.13.6 Contractor's submittal of Shop Drawings, Product Data, Samples and similar submittals shall be Contractor's representation that Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, and that Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

7.13.7 Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until such submittals have been accepted by Owner or Architect. Such review and acceptance shall be in a timely manner so as not to delay the progress of the Work. Contractor shall carry out the Work in such submittals as accepted by Owner or Architect.

7.13.8 Contractor shall make any corrections required by Owner or Architect and shall resubmit the required number of corrected copies of Shop Drawings, Product Data, Samples or similar submittals until approved. Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to any revisions other than those requested by Owner or Architect on previous submittals.

7.13.9 Contractor shall not be relieved of responsibility for errors or omissions contained in Shop Drawings, Product Data, Samples or similar submittals based upon the approval, modification or acceptance thereof by Owner or Architect unless the Contractor has specifically informed Owner in writing of such deviation at the time of submittal and Owner has given prior written approval to the specific deviation.

7.13.10 Contractor shall be responsible for furnishing its Subcontractors and Vendors with sufficient copies of Shop Drawings, Product Data and Samples, including any such construction data supplied by other Subcontractors and Vendors, as may be necessary for the coordination of the activities of all Subcontractors and Vendors.

7.13.11 Contractor shall submit one (1) reproducible transparency copy and six (6) blue line prints therefrom of all Shop Drawings for all shop-fabricated items and all detailed assemblies indicated on the Shop Drawings.

7.14 Project Record Documents and As-Built Requirements. Contractor shall maintain at the Site one (1) record copy of all Specifications, Drawings, approved Shop Drawings, Change Orders and other modifications, addenda, Schedules and instructions, in good order.

7.14.1 The record Drawings shall be one (1) set of black (or blue) and white prints of the Drawings on which it must record all "as-built" changes during the course of construction. This record set shall be maintained separate and apart from documents used for construction reference as described in *Section 7.2.13* above.

7.14.2 All as-built documents shall be kept current and Contractor shall not permanently conceal or cover any Work until all required information has been recorded.

7.14.3 Records of exterior underground utilities shall be made at the time of installation.

7.14.4 In marking any as-built conditions, Contractor shall ensure that such Drawings indicate by measured dimension to building corners or other permanent monuments the exact locations of all piping, conduit or utilities concealed in concrete slabs, behind walls or ceilings or underground. As built Drawings shall be made to scale and shall also include exact locations of valves, pull boxes and similar items as required for maintenance or repair

service. Prior to Final Completion and as a condition to Final Payment, Contractor shall be responsible for providing Owner and Owner's Lenders with a fully completed and accurate set of all as-built Drawings in an acceptable electronic format, as Contract Documents for Owner's permanent records.

7.14.5 All documents described in this *Section 7.14*, including the as-built Drawings, shall be readily accessible at the Site for inspection upon request by Owner, Owner's Lenders, the Architect and/or their authorized representatives throughout the course of the Work.

7.15 Site Clean Up. All work performed under this Contract shall comply with all Laws governing applicable noise, dust and pollution control requirements.

7.15.1 Daily Clean Up. Contractor shall regularly and on a daily basis during the course of the Work keep the Site and all Work-related areas in a clean and safe condition to Owner's reasonable satisfaction by promptly removing and properly disposing of all debris and rubbish generated by Contractor's operations. Contractor shall maintain streets leading to the Site and used as a means of ingress or egress from the Site in a clean condition, and shall remove from these areas all of Contractor's (and Subcontractors' and Vendors') spillage and tracking arising from the performance of the Work, and shall promptly repair any damage to same. Contractor shall minimize the impact and effect of the Work and other activity on the Site on properties adjoining and nearby the Site, and shall take all necessary and commercially practical precautions (and comply with all applicable Laws) to prevent any debris including, but not limited to, fugitive dust, from entering or interfering with any adjacent or nearby property.

7.15.2 Substantial Completion Clean Up. Except to the extent that Owner may designate otherwise in writing, the Contractor shall perform all "*Punch List Items*" prior to the date of issuance of the Certificate of Substantial Completion pursuant to *Section 12.1* below. Such Punch List Items shall include, but not be limited to:

(a) removal of all wastes and rubbish;

(b) cleaning of all walls and other surfaces including tile, wood and glass surfaces;

(c) replacement of all broken glass (including removing labels, washing and polishing both sides);

(d) cleaning and polishing of all plumbing fixtures and equipment;

(e) restoring existing facilities such as roads, other paved surfaces, fencing and curbing at the Site to either their pre-existing condition unless more is required by the Contract Documents;

(f) requiring affected Subcontractors to promptly remove from the Site all temporary offices, tools, equipment, machinery and surplus materials not required for the continued performance of the Work and otherwise leaving the designated areas "vacuum clean;"

(g) machine-sweep and clean all drive-way surfaces;

(h) grind, smooth, and sweep clean any concrete surfaces, as necessary or desirable;

(i) remove temporary protections;

(j) remove marks, spots, dust, stains, fingerprints and other soil or dirt from all floors, tile, walls, finishes, marble, finished materials, fixtures, equipment and other Work, and wash or wipe clean and leave same in undamaged, new condition;

(k) clean tubs, toilets and other fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged new condition;

(l) clean all metal finished in accordance with recommendations of the manufacturer and accepted industry standards; and

(m) clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen.

Punch List Items shall not include but shall be in addition to, any items of defective workmanship or omissions which are to be corrected at Contractor's cost pursuant to Article 10 of this Agreement.

7.15.3 Final Completion Clean Up. Prior to Final Completion pursuant to *Section 12.2* below, Contractor shall complete any Punch List Items described above which were either not required by Owner at the time of Substantial Completion or which were not satisfactorily completed and accepted by Owner at the time of Substantial Completion.

7.15.4 Site Clean Up By Owner. In the event Contractor fails to maintain the Site as described above in a manner satisfactory to Owner, and fails to complete appropriate clean up and/or removal activities within twenty-four (24) hours after receipt of Owner's written notice to do so, Owner shall have the right to perform such clean up and removal activities at Contractor's expense and may withhold and or deduct such costs from any amounts owed to Contractor.

7.16 Construction Facilities and Temporary Controls. Contractor shall be solely responsible for the design, transport, erection, inspection and maintenance of all temporary supports and structures;

including, but not limited to, electricity and lighting, heat, telephone and fax, water, sanitary facilities, fire protection, hoisting equipment and machinery, staging and scaffolding, temporary equipment and materials, all shoring and bracing, all cranes, hoists, derricks and supports, barriers and fencing, water control, field

office, storage facilities and all other types of temporary supports and structures required for the Work and provided by Contractor or its Subcontractors while performing the Work. Contractor shall provide and maintain reasonable safety precautions to protect the public and avoid obstruction or interference with vehicular or pedestrian traffic in public streets, alleyways or private rights-of-way. Contractor shall, or shall cause Subcontractors to, leave proper access to hydrants and other similar places, and shall provide sufficient lighting during working hours and from twilight of each day until full daylight of each following day. When work is suspended, Contractor shall, or shall cause Subcontractors to leave roadways and sidewalks in proper condition and restore all such to good condition on completion of the Work and in compliance with all laws. Contractor shall, or shall cause Subcontractors to, maintain and keep in good repair, shift and alter as conditions may require, all guard rails, passageways and temporary structures and remove same when the Work is completed or when the need for their use has ceased.

7.17 Cutting and Patching of Work. Contractor shall be responsible for all cutting, fitting or patching of the Work that may be required to properly complete the Work or make its parts fit together properly. Any costs resulting from improper cutting, fitting and patching to any work performed by Owner or any other contractors to Owner shall be Contractor's responsibility. Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with consent of Owner and of such separate contractor. Contractor, if required by Specifications and Drawings, shall make connections to materials or equipment furnished, set, and/or installed by other contractors. No Work connecting to such materials or equipment provided by other contractors shall be done without giving such contractors a reasonable length of time to complete their work or until permission to proceed has been obtained from Owner. Owner shall secure and provide to Contractor the Shop Drawings from Owner's other contractors for such of their work as is to be built into Contractor's Work, or to which Contractor must make connection, and Contractor shall review and advise Owner of any discrepancy or unsuitability relative to its own Work. Each contractor shall provide all openings and chases in its own work, necessary for the installation of process equipment, and shall fill in around the same afterwards, if required.

7.18 Performance and Payment Bond Requirements

7.18.1 Contractor's Bond Requirements. Not later than five (5) business days after Contractor's receipt of Owner's Notice to Proceed and in any event prior to commencement of any Work, Contractor shall furnish a fully executed Performance and Payment Bond, in a form approved in writing by Owner and Owner's Lenders and naming Owner and Owner's Lenders (as Owner's Lenders may change from time to time) as obligees and beneficiaries, covering both the Contractor's faithful performance of this Contract and the payment of all obligations arising hereunder. The Payment and Performance Bond shall be in the amount of $150,000,000.00. Thereafter, such Payment and Performance Bond shall not be increased or decreased unless Owner grants advance written approval of such increase or decrease. The Payment and Performance Bond and all supplements shall be issued by a bonding company having an A.M. Best Co. rating of A XV or better and licensed in Nevada.

7.18.2 Subcontractor's Bond Requirements. On a case-by-case basis, Owner may elect to require that Contractor's Subcontractors provide a Performance and Payment Bond as described in *Subsection 7.18.1* above using a form approved by Owner and Owner's Lenders. The amount of each such Payment and Performance Bond shall be equivalent to the full value of the relevant subcontract or such lesser amount as Owner may approve in writing. All costs of each Performance

and Payment Bond for those Subcontractors so designated by Owner shall be quoted separately to Owner for Owner's prior written approval before such bond is obtained. Contractor shall recommend to Owner whether or not to require such Payment and Performance Bonds as to each respective Subcontractor. Nothing in this *Section 7.18* shall preclude Contractor from requiring a bond from any Subcontractor.

7.19 Liens.

7.19.1 If at any time Owner receives any stop notice, mechanic's lien or similar claim pertaining to unpaid amounts for any labor, goods, materials, equipment or services provided as part of Contractor's scope of Work (and provided Owner has paid all sums then due and owing to Contractor pursuant to and within the time period set forth in the Contract Documents), Contractor agrees to immediately cause such notices, liens or claims to be removed, or to file a bond in lieu thereof in an amount satisfactory to Owner. All costs incurred by Contractor in effecting the foregoing shall be at Contractor's sole expense as a Non-Allowable Cost of the Work, except that should Contractor be successful in having any filed mechanic's lien removed of record and dismissed with prejudice without the necessity of Contractor posting any bond and without the payment by Contractor to the lien claimant of any monies to effect the removal and dismissal of said lien, all of Contractor's reasonable fees and costs incurred in having the mechanic's lien removed and dismissed shall be a Cost of the Work. It is expressly understood that all of Contractor's obligations with respect to this *Section 7.19* begin immediately at the outset of any notice or filing of a claim, either by correspondence or court proceeding, and without regard to any showing of fault on the Contractor's part. Contractor's failure to cause such notices or liens to be removed or to be bonded against in accordance with *Section 7.19.2* below, shall constitute a material breach of this Contract entitling Owner to exercise all of its rights and remedies provided hereunder and at law.

7.19.2 If any such notice is received or such lien is filed and Contractor does not obtain a bond and file with the appropriate court a petition to substitute the bond for such lien or notice within five (5) working days after receipt of notice of such lien (or such lesser period in any loan documents relating to Owner's Lenders), and obtain a court order within thirty (30) days after filing such petition, allowing substitution of the bond for such lien, Owner shall have the right to pay all sums necessary to obtain removal of such lien or notice and deduct all sums to be paid (including attorneys' fees and the amount of any obligations assumed by Owner) from the Guaranteed Maximum Price and or from the next succeeding Applications For Progress Payments.

7.20 Royalties and Patents. Contractor shall pay as a Cost of the Work in accordance with *Section 3.2.11* hereof all royalties and license fees relating to the Work. Contractor shall defend suits or claims for infringement of patent rights and shall indemnify and hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor has reason to believe that the required design, process or product is an infringement of a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Owner.

7.21 Training. Prior to and as a condition to payment of the Final Payment, Contractor shall orient and instruct the responsible maintenance personnel designated by Owner in the operations of all equipment and shall provide the maintenance personnel with pertinent literature and operational manuals for all equipment designated by Owner.

7.22 Construction Photographs. Contractor shall submit color construction photographs to Owner, Owner's Lenders and the Architect with each month's Application For Payment during the Work. Each month, such photographs shall consist of four (4) views of the building from ground-view points as directed by Owner or the Architect.

7.23 Statement of Unpaid Claims. Whenever requested by Owner, Contractor shall certify to Owner in writing (in a form satisfactory to Owner) the amounts then claimed by and/or due and owing from Contractor to any person(s) for labor and services performed and materials and supplies furnished relating to the Work, setting forth the names of the persons whose charges or claims for materials, supplies, labor, or services have been paid and whose charges or claims are unpaid or in dispute, and the amount due to or claimed by each respectively.

ARTICLE VIII.
ARCHITECT

8.1 Architect's Administration of the Contract

8.1.1 The term Architect includes the Architect and the Architect's authorized representatives. Architect shall act in its professional capacity as an advisor to Owner during the course of the Work.

8.1.2 Owner shall cause the Architect to provide Contractor with three (3) sets of Drawings and/or Specifications which have been approved for use during construction and all revisions thereto. It shall be Contractor's responsibility to arrange and pay for as a Cost of the Work in accordance with *Section 3.2* hereof, reproductions as may be needed by Contractor to perform its Work.

8.1.3 The Architect shall at all times have access to the Work wherever it is in preparation or being performed.

8.1.4 The Architect shall have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed, by giving reasonable advance notice in writing to both Owner and Contractor. However, only Owner shall have authority to reject any Work which does not conform to the Contract Documents.

8.1.5 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the limited purposes of checking for conformance with the Specifications and related design intent expressed in the Contract Documents. The Architect shall provide its response to all such submittals in a timely manner to avoid delays in the Work, and in any event not later than fourteen (14) calendar days after receipt thereof by Architect thereof.

ARTICLE IX.
SUBCONTRACTORS AND VENDORS

9.1 Subcontractors and Vendors. Contractor shall be responsible for the performance of Subcontractors and Vendors of every tier to the same extent as if performed by Contractor on a direct basis, including coordination of those portions of the Work performed by Subcontractors and Vendors.

9.2 Consent To Use Proposed Subcontractors and Vendors.

9.2.1 To the extent practicable, Contractor shall propose a minimum of three (3) qualified lump-sum or cost of the work plus a fee bidders for each element of the Work to be performed by Subcontractors and Vendors (including those who are to furnish materials or equipment fabricated to a special design). Owner shall, within five (5) calendar days after receipt thereof, reply to Contractor stating whether or not Owner has a reasonable objection to any such proposed person or entity. Owner's failure to reply in writing to Contractor's proposed list within five (5) calendar days after the receipt thereof shall constitute Owner's acceptance of such list. Owner's consent with respect to any Subcontractor or Vendor pursuant to this Article 9 shall not in any way relieve the Contractor from its obligations to fully manage, administer and assure that the Subcontractor

complies with the requirements of the Contract Documents, including all dates identified in the Project Schedule.

9.2.2 Contractor shall analyze all of the bids for each element of the Work and shall make a recommendation to the Owner as to which bid should be selected. Owner shall then make the selection with assistance from the Contractor. In the event the Subcontractor chosen by Owner is different than the Subcontractor recommended by Contractor, and the bid amount from the Subcontractor chosen by Owner exceeds by the lesser of 5% or $25,000.00 the bid amount from the Subcontractor recommended by Contractor, such bid difference in excess of the lesser of said 5% or $25,000.00 shall be cause for an increase in the Guaranteed Maximum Price (or Owner may choose to apply amounts from the Owner Contingency without an increase in the Guaranteed Maximum Price) provided that the bid recommended by Contractor was in full compliance with the requirements of the Contract Documents.

9.3 Form of Subcontracts and Purchase Orders. Contractor shall furnish Owner and Owner's Lenders with a copy of Contractor's proposed forms for use as subcontracts and purchase orders (which includes professional services agreements) for Owner's review and approval prior to Contractor's use thereof, and Contractor shall only enter into those subcontracts approved by Owner in writing, without material modification; provided, however, subcontracts and purchase orders which do not subject Contractor to liability in excess of $500,000 individually, and otherwise are in accordance with the Contract Documents, shall not require Owner's prior written approval. Contractor shall furnish to Owner a copy of each subcontract and purchase order it enters into in connection with the Work within ten (10) calendar days after execution of such subcontract or purchase order. All subcontracts and purchase orders shall require all Subcontractors and Vendors to assume toward Contractor the same legal obligations and responsibilities which Contractor assumes toward Owner in this Contract, including requiring the indemnities provided in Article 14 hereof, except as specifically provided otherwise in the Contract Documents or waived by Owner in writing. All subcontracts and purchase orders shall require that the subcontract may not be assigned by Subcontractor but permit the assignment of the subcontract by Contractor to Owner or a third party designated by Owner, including Owner's Lenders, as provided in *Section 9.8* and Article 21 of this Agreement. All subcontract agreements and purchase orders shall conform to the requirements of the Contract Documents. All subcontracts and purchase orders shall also provide that any warranties contained or referenced therein shall run to the benefit of and be enforceable by Owner and Owner's Lenders. Contractor shall not

waive or fail to exercise any material or significant right or remedy under any subcontract or waive any material or significant default under any subcontract without Owner's prior written approval.

9.4 Subcontractors and Vendors Designated By Owner. Contractor shall not be required to contract at its own risk with a Subcontractor or Vendor when Contractor has a reasonable objection, provided that the reason for such objection is identified to Owner in writing with five (5) calendar days of Owner's designation objected to by Contractor.

9.5 Payments to Subcontractors from the Contractor. Contractor agrees to pay each Subcontractor and Vendor within five (5) days of receipt of each progress payment from Owner an amount equal to the percentage of completion allowed to the Contractor on account of the Work of such Subcontractor or Vendor but not more than amount set forth for such respective Subcontractor and Vendor in the applicable Application for Progress Payment, less the percentage retained and amounts withheld from payments to the Contractor. Contractor further agrees to require each Subcontractor to make similar payments to its Subcontractors and Vendors. The obligation of Contractor to pay Subcontractors and Vendors (and their obligation to pay their Subcontractors and Vendors) is an independent obligation from the obligation of Owner to make payment to Contractor. Owner shall have no obligation to pay or to see to the payment of any monies to any Subcontractor or Vendor.

9.6 Subcontractor and Vendor Replacements. Contractor shall not replace any Subcontractor or Vendor who has been approved by Owner, unless Owner gives prior written approval to the replacement.

9.7 Communications With Subcontractors and Vendors. In cooperation with, and upon notice to Contractor, Owner and Owner's Lenders shall have the right at any time and from time to time to contact Contractor's Subcontractors and Vendors to discuss the progress of their portion of the Work. Contractor shall have the right to be present at the time of any such direct communications, excepting only if Contractor is in default under the Contract or unreasonably refuses to attend meetings after Owner has given Contractor reasonable advance notice and opportunity to be present. Notwithstanding the exercise of any of Owner's and Owner's Lenders' rights of direct communication in the subcontracting process or the process of managing subcontracts, Contractor shall be responsible and liable to Owner for all acts or omissions of Subcontractors and Vendors and their respective agents and employees and any other person performing any of the Work under an agreement with Contractor or any Subcontractor or Vendor.

9.8 Assignment. Contractor hereby assigns to Owner all its interest in all subcontract agreements and purchase orders now existing or hereafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in said writing. Such assignment may not be withdrawn by Contractor prior to expiration of the Warranty Period, and Owner may accept said assignment at any time during the course of construction prior to expiration of the Warranty Period. Upon such acceptance by Owner: (a) Contractor shall promptly furnish to Owner the originals or copies of the designated subcontract agreements and purchase orders, and (b) Owner shall only be required to compensate the designated Subcontractor(s) or Vendor(s) for compensation accruing to same for Work done or materials delivered from and after the date as of which Owner accepts assignment of the subcontract agreement(s) or purchase order(s) in writing. All sums due and owing by Contractor to the designated Subcontractor(s) or Vendor(s) for Work performed or material supplied prior to the date as of which Owner accepts in writing the subcontract agreement(s) or purchase order(s), and all other obligations of Contractor accruing prior to Owner's written acceptance of such assignment, shall constitute a debt and an obligation solely between such Subcontractor(s) or Vendor(s) and Contractor, and Owner shall have no liability with respect such sums or any other obligations of Contractor. It is further agreed that all subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and Owner's assigns (including Owner's Lenders) under the terms and conditions stated in this Section and that all such Subcontractors and Vendors shall continue to perform their Work for Owner (or Owner's Lenders as the case are) pursuant to the terms of the respective subcontract or purchase order. Owner agrees not to accept such assignment solely for the purpose of intentionally causing Contractor harm and in bad faith.

ARTICLE X.
WARRANTY OBLIGATIONS

10.1 Contractor's Warranty. Contractor guarantees and warrants to Owner that (a) the Work, whether performed by Contractor's own personnel or by any Subcontractors or Vendors, shall be first class in quality, free from all defects whatsoever (including, without limitation, patent, latent or developed defects or inherent vice (except inherent vice or developed defects resulting solely due to material specified by the Contract Documents unless Contractor knows or should reasonably have known through the exercise of their obligations and due care that such specified items are subject to inherent vice or developed defects), and in strict conformance with the Contract Documents, the highest standard for construction practices and quality applicable to first class projects associated with luxury resorts, and (b) all materials, appliances, mechanical devices, equipment and supplies incorporated into the Work shall be new and of such quality to strictly meet or exceed the

Specifications and requirements of the Contract Documents. If requested by Owner at any time and from time to time, Contractor will furnish satisfactory evidence to Owner as to the kind and quality of materials, appliances, mechanical devices, equipment and supplies. All Work not conforming to the requirements of this Section (including, without limitation, substitutions or deviations not properly approved and authorized by Owner in writing), shall be considered defective.

10.2 Contractor's Warranty Period. While Contractor, Subcontractors and Vendors shall be responsible for strict compliance with the requirements of *Section 10.1* above throughout the course of the Work, the "*Warranty Period*" shall commence upon the issuance of a Certificate of Substantial Completion for the Work as a whole pursuant to *Section 12.1* of this Agreement and shall extend for a period of twelve (12) months from the date of issuance of such Certificate or for such longer period as set forth in an applicable manufacturer's warranty or as may be required by applicable Laws. Nothing contained in this Article 10 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents or under applicable law, in equity or otherwise, or reduce the period of any other similar warranty or guaranty that may apply at law or otherwise to the Work.

10.3 Compliance With Contract Documents. Upon receipt of Owner's written notice at any time during the course of the Work or during the Warranty Period, and during any longer period of time as are prescribed by any applicable Laws or other applicable terms, Contractor (at no cost to Owner) shall at Contractor's sole cost promptly perform all corrective services (including, without limitation, furnishing all labor, materials, equipment and other services at the Site and elsewhere) to Owner's satisfaction as may be necessary to remedy any defective workmanship or omissions in the Contractor's Work, including without

limitation, promptly correct or replace any Work rejected by Owner or which is incomplete, defective or fails to conform to the Contract Documents, whether observed before or after Final Completion of the Work and whether or not fabricated, installed, or completed. Contractor's compliance with its obligations as stated in this Article 10, and Owner's acceptance of such corrective services, shall at all times be determined by ascertaining whether Contractor has achieved strict compliance to Owner's reasonable satisfaction with both the written and inferable requirements contained in the Contract Documents.

10.4 Warranty Costs. All costs incurred by Contractor in fulfilling Contractor's remedial warranty obligations as set forth on this Article 10 shall be Non-Allowable Costs of the Work and shall be solely Contractor's responsibility which Contractor shall pay, including, without limitation, additional testing and inspections and compensation for the services of any professional or consultant made necessary thereby. Contractor shall also, as part of Contractor's warranty and guarantee at Contractor's own expense, repair or replace any other damaged components, material, finishes, furnishings and other Work or portions of the Project or other property damaged, affected or otherwise made necessary by or resulting from such defective, non-conforming or incomplete Work, to return the same to their original condition. In addition, and notwithstanding anything to the contrary in this Agreement, if within one (1) year after Substantial Completion any portion of the Work (including, without limitation, any roof and any walls) is not watertight and leakproof at every point and in every area (except where leaks can be attributed to damage to the Work proximately caused by extraordinary, external forces beyond Contractor's control and which Contractor could not reasonably have anticipated), Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at Contractor's own expense, do any work necessary to make the Work watertight.

10.5 Timeliness of Corrective Services. Contractor shall use all best efforts to fully perform all warranty and corrective services to Owner's satisfaction within five (5) calendar days of the receipt of Owner's written notice of defective workmanship. If the corrective services require more than five (5) calendar days for completion, Contractor shall submit, within five (5) calendar days of receipt of Owner's written notice, a comprehensive written proposal itemizing all corrective actions necessary which Contractor is prepared to and shall immediately undertake and diligently pursue to enable the

Work to achieve strict compliance with the Contract Documents, including the latest Drawings and Specifications. In performing such corrective Work, Contractor shall perform its Work so as to cause the least inconvenience and disruption to Owner's business which may require performance of Work at hours when Owner's business is least active. Contractor shall not be entitled to the extra costs, if any, incurred in connection with performing corrective Work at non-business hours. Additionally, the provisions of *Section 7.6* and *7.7* of this Agreement relating to cooperation with Owner, access, avoidance of disruption and related matters as set forth therein shall also apply to the performance of any warranty related work.

10.6 Warranty Survival. Contractor's warranty obligations set forth in this Article 10 shall apply to Work done by Subcontractors or Vendors, as well as to Work done by direct employees of Contractor, and such provisions shall survive acceptance of the Work and survive any termination of the Contract and Contractor shall be responsible to fully indemnify and hold Owner harmless from any and all liens, claims, lawsuits, costs and expenses which may arise out of the failure of the Contractor to fulfill its warranty obligations pursuant to this Contract.

10.7 Owner's Right To Correct. In the event Contractor fails to timely correct incomplete, nonconforming or defective Work following Owner's written notice described in *Section 10.5* above, Owner shall have the right to correct or arrange for the correction of any defects or omissions in the Work at the Contractor's sole cost and expense and not as Costs of the Work. Contractor shall bear all costs incurred by Owner in correcting such defective Work, including, but not limited to, additional costs for redesigns by the Architect and other design consultants, replacement contractors, materials, equipment and all services provided by Owner's personnel. Owner shall be entitled to withhold and offset all costs incurred during any such corrective work against any funds which are otherwise due or which may become payable to the Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall immediately upon demand pay the difference to Owner.

10.8 Owner's Right to Supplement Work of Contractor. If the Contractor violates or breaches any of the terms, conditions or covenants of the Contract, then Owner may, without prejudice to any other remedy it may have and following the expiration of any applicable cure periods, provide such reasonable labor and materials as are reasonably necessary to remedy such deficiency including the right to hire another contractor to supplement the Work of the Contractor and deduct all costs thereof from any money due or thereafter becoming due to the Contractor and reduce the Guaranteed Maximum Price by all such amounts.

10.9 Acceptance of Non-Conforming Work. Owner may, in its sole discretion, elect to accept a part of the Work which is not in accordance with the requirements of the Contract Documents. In such case, the Guaranteed Maximum Price shall be reduced as appropriate and equitable. Owner's acceptance of any non-conforming Work shall not waive or otherwise affect Owner's right to demand that Contractor correct any other defects or areas of non-conforming Work.

10.10 Warranty Exclusions. Contractor's warranty obligations shall not apply to defects caused by ordinary wear and tear, insufficient maintenance or improper operation or use by Owner.

10.11 Written Guaranty. All guarantees and warranties specified in the Contract, including Contractor's general warranty in this Article 10, shall be executed in writing by Contractor and each Subcontractor on their respective letterhead, signed jointly by Contractor and Subcontractor, and furnished to Owner upon commencement of the respective term of each such guarantee and warranty and as a condition to Final Payment. Owner shall, in addition to the guarantee and warranty provided in this Article 10, also have the benefit of, and Contractor shall assign to Owner in form and substance satisfactory to Owner, all warranties, service life policies, indemnities and guarantees with respect to any and all materials, appliances, mechanical devices, supplies and equipment incorporated into the Work and given by the manufacturer, retailer, or other supplier, which shall be supplied and assigned

to Owner promptly after such is received by or becomes available to Contractor and as a condition to Final Payment. Further, at Owner's request, Contractor shall assist Owner in enforcing all such warranties, guarantees, policies and indemnities.

ARTICLE XI.
SCHEDULING, DELAYS AND ACCELERATION

11.1 Owner's Right to Modify. Notwithstanding the Project Schedule, Owner has the right to modify or otherwise change the sequence of the Work and Contractor shall comply therewith and adjust schedules accordingly. If Contractor believes such modification or change causes a delay or acceleration in the completion of the Work, Contractor shall provide written notice to Owner in accordance with *Sections 11.6* and/or *11.8* below. Any such modifications or changes in sequence applies only to scheduling and shall not be construed to mean a change in the method or means employed by Contractor for the execution of the Work.

11.2 Project Schedule. Contractor has furnished a detailed "*Project Schedule*" describing the activities to be accomplished and their dependency relationships. The Project Schedule includes an agreed upon Design and Permit Schedule setting forth time periods for Owner to provide Drawings and Major Permits to Contractors, and an agreed upon construction schedule setting forth Interim Milestone Dates for Contractor to achieve certain construction completion milestones. Contractor's and Owner's performance will be measured against the Project Schedule. The Project Schedule (and any revisions thereto) shall be updated and revised at appropriate intervals as required by Owner or the current and projected conditions of the Work and Project, shall designate those items on the critical path of the Work, shall be related to the entire Project to the extent required by the Contract Documents, shall indicate dates necessary to vacate various work areas, and shall provide for expeditious and practicable execution of the Work. The Project Schedule and all subsequent updates and revisions shall be printed in a tabular bar chart format. Contractor shall provide Owner with a diskette containing an electronic copy of the Project Schedule as submitted, including all logic diagram formats.

11.3 Schedule Updates. Contractor shall submit a "*Schedule Update*" along with each monthly Application For Progress Payment for comparison to the Project Schedule. The First Schedule Update shall be dated and identified as "*Schedule Update No. 1*" and shall identify the then current status of all major Work activities identified in the Project Schedule. All Schedule Updates shall include a comprehensive narrative setting forth (i) actual activity completion dates, (ii) the effect on the Project Schedule of any delays in any activities in progress and/or the impact of known or suspected delays which are expected to effect future Work, (iii) the effect of Contract Modifications on the Project Schedule, (iv) all actual and potential variances between latest Schedule Update and probable actual completion dates; (v) all Work activities not started or completed in accordance with the Project Schedule, and (vi) recommends specific Recovery Plans to Owner which may be necessary to achieve the Contract Time and/or relevant Interim Milestone Dates. All subsequent revisions shall be dated and numbered sequentially. In addition, each Schedule Update shall be clearly labeled to state the effective date of the current status information contained therein. Contractor's failure to provide Schedule Updates as required in this *Section 11.3*, or as otherwise mutually agreed in writing, shall be a material breach of this Contract.

11.4 Force Majeure Delay. All delays due to fire, industry wide labor disputes affecting the general Las Vegas, Nevada area and not limited to the Project (and not a jurisdictional dispute), adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes which, based on Contractor's extensive experience in constructing projects of similar scope and complexity in the same location and Contractor's representations contained in the Contract Documents, are unforeseeable and beyond the Contractor's reasonable control shall be a "*Force Majeure Delay*." Owner shall be excused from performance of its obligations to the extent of any Force Majeure events

affecting Owner, but solely to the extent the failure to perform such obligations by Owner is attributable to that Force Majeure event.

11.5 Owner Delay. Any delays in Contractor's Work that are caused in whole or in part by Owner, its agents, consultants or separate contractors, and are not the fault of Contractor or any Subcontractor or any party for which either is responsible or liable at law or under the Contract Documents, shall be an "*Owner Delay*."

11.6 Extensions of Time and Guaranteed Maximum Price Increases for Delay.

11.6.1 To the extent the Contractor or any Subcontractor is delayed at any time in the progress of the Work by an Owner Delay, Force Majeure Delay, or by other causes which Owner and Contractor agree may justify delay, then the Contract Time shall be reasonably extended by Change Order, and the Guaranteed Maximum Price increased (or a portion of the Owner Contingency applied if available), if at all, in accordance with the procedures described this *Section 11.6* and in Article 18 below.

11.6.2 Notwithstanding any other provision of the Contract Documents, any item that cannot be demonstrated as being on or affecting the critical path of the Work shall not result in an extension of time to perform the Work or an increase in the Guaranteed Maximum Price in the event such item is delayed. Further, to the extent any Owner Delay or Force Majeure Delay could have been prevented or reduced if Contractor had, consistent with the terms of the Contract Documents, performed its duties and responsibilities under the Contract Documents, such delay will not entitle Contractor to an extension of the Contract Time (except for that portion, if any, of such Owner Delay or Force Majeure Delay which could not have been reduced consistent with the foregoing and subject to the other requirements of the Contract Documents, including this *Section 11.6*) or increase in the Guaranteed Maximum Price.

11.6.3 Extensions of the Contract Time for the Work or an increase in the Guaranteed Maximum Price will be authorized by Owner only if (a) Contractor has been necessarily delayed in meeting such Guaranteed Date of Substantial Completion by a cause which constitutes an Owner Delay or Force Majeure Delay, or a change to the Work initiated by the Owner; (b) the completion of the Work by the applicable interim Milestone Date or the total Work by the Guaranteed Date of Substantial Completion is actually and necessarily delayed by such cause; (c) the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay, and (d) Contractor has met any notice requirements set forth in the Contract Documents for it to be entitled to any extension of time or increased costs. All extensions of time and/or increases in the Guaranteed Maximum Price to which Contractor is entitled hereunder will be acknowledged by Change Order.

11.6.4 The period of any extension of time for delay shall be only that which is necessary to make up the time actually lost for a Work item or items identifiable on the Project Schedule as being on or affecting the critical path at the time in which the delay occurs.

11.6.5 The amount of increase, if any, in the Guaranteed Maximum Price due to a delay shall be equal to the additional cost actually, reasonably and necessarily incurred by Contractor in Cost of the Work items (a) as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at Owner's request during such delay and (b) other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the delayed Work caused solely by such delay, but (as to both of the foregoing (a) and (b)), only if and to the extent such delay exceeds a period of thirty (30) consecutive days following commencement of the Work, and to the extent such actions are necessary, if at all, to be

performed by Contractor to maintain the extended Contract Time and Project Schedule after taking into account any extension of time as provided for in this *Section 11.6*.

11.6.6 Contractor shall not be entitled to receive a separate extension of time or an increase in the Guaranteed Maximum Price for each of several causes of delay operating concurrently but only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of Contractor or Subcontractor or for which Contractor or Subcontractor is responsible, and would of itself, irrespective of the concurrent causes, have delayed the Work, no extension of time or an increase in the Guaranteed Maximum Price will be allowed for the period of delay resulting from such act, fault or omission. Further all such extensions and increases shall be netted out with any reductions in Contract Time or Guaranteed Maximum Price, before implementing any such extension or increase.

11.6.7 As a condition precedent to the granting of an extension of time or an increase in the Guaranteed Maximum Price, Contractor shall give written notice to Owner within ten (10) calendar days after the time when Contractor knows of any cause which might result in delay, for which it may claim an extension of time or an increase in the Guaranteed Maximum Price, including those causes of which Owner has knowledge, specifically stating in such notice that an extension or an increase in the Guaranteed Maximum Price is or may be claimed, and identifying such cause and describing, as fully as practicable, at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the notice. Contractor shall not be entitled to an extension of time or an increase in the Guaranteed Maximum Price to the extent such would not be necessary, but for Contractor's failure to strictly comply with this *Section 11.6*.

11.6.8 Since the possible necessity for an extension of time or an increase in the Guaranteed Maximum Price may materially alter the scheduling plans, and other actions of Owner and since, with sufficient notice, Owner may, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time or an increase in the Guaranteed Maximum Price might be claimed, the giving of written notice as required above is of the essence of Contractor's obligations hereunder and failure of Contractor to give written notice as required above shall be a conclusive waiver of an extension of time and/or an increase in the Guaranteed Maximum Price for the cause of delay in question.

11.6.9 It shall in all cases be presumed that no extension, or further extension, of time and no increase in the Guaranteed Maximum Price is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Owner. Contractor shall maintain adequate records supporting any claim for an extension of time or increase in the Guaranteed Maximum Price.

11.6.10 Notwithstanding the provisions of this *Section 11.6*, if pursuant to this *Section 11.6* Contractor is entitled to an increase in the Guaranteed Maximum Price, Owner shall have the right, in lieu of any increase, to apply a portion of the Owner Contingency (to the extent funds remain) to cover such increase in the Guaranteed Maximum Price due to such delay covered by this *Section 11.6*. If the Owner Contingency is not sufficient to cover the required increase in the Guaranteed Maximum Price, the Owner Contingency may still be utilized by Owner but the Guaranteed Maximum Price shall be increased by the difference between the required increase in the Guaranteed Maximum Price as provided in this *Section 11.6.10* and the available amount of the Owner Contingency applied by Owner.

11.7 Limitations. Contractor agrees for itself and for its Subcontractors, and will cause each Subcontractor to agree, that it will make no claim or claims against the Site, Project, Owner (or any party affiliated or associated with Owner or any assets of Owner), or Owner's Lenders for damages or

losses incurred as a result of or arising out of delays in the Work, including but not limited to any Owner Delay or Force Majeure Delay. Any such delay in the Work, if claimed by or through Contractor, solely and completely will be compensated and balanced by (a) an extension of the Contract Time, and (b) an increase in the Guaranteed Maximum Price, strictly in accordance with *Section 11.6* above, and such extension and increase shall be the sole and exclusive remedy for Contractor and all Subcontractors and Vendors for all delays. Contractor and each Subcontractor who performs any portion of the Work agree to accept such extensions at no additional cost (except as provided in this Section) to Owner, and waive and relinquish any right to payments of any kind for any delays. Further, the limitations in *Section 17.4* hereof shall also apply to any delay.

11.8 Recovery Plans. The Guaranteed Maximum Price is based on Contractor working as many hours as necessary to properly perform the Work and achieve the Project Schedule requirements. In the event it is necessary for Contractor or any Subcontractor to work additional overtime in order to maintain the Project Schedule, Contractor shall be responsible for all costs relating to such overtime, though Contractor shall have the right to use the Construction Contingency in accordance with *Section 3.1.6* hereof. "*Recovery Plan*" means a detailed narrative explanation clearly stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities required for all affected elements of the Work to enable Contractor to either: (a) complete the respective Interim Milestones by the respective Interim Milestone Dates; or (b) obtain Substantial Completion of the Work in its entirety within the Contract Time.

11.8.1 If Owner determines at any time based on reasonable evidence that Contractor is behind schedule or is otherwise in jeopardy of failing to complete any Interim Milestone by the applicable Interim Milestone Date or the Work within the Contract Time, Owner shall issue a written notice to Contractor identifying areas of concern and requiring that Contractor provide a Recovery Plan to Owner.

11.8.2 Upon receipt of Owner's notice, Contractor shall immediately undertake all available steps to overcome or mitigate against the adverse effects of all delays identified by Owner. Contractor's failure to undertake all available steps to mitigate the effects of such delays shall constitute a waiver of Contractor's right to claim relief for any schedule extensions and/or additional compensation to the extent that Contractor's failure to act timely contributed to such delays.

11.8.3 Contractor shall, within seven (7) calendar days after receipt of Owner's notice, provide its Recovery Plan to Owner notwithstanding whether or not Contractor disputes responsibility for the cause(s) of such delays.

11.8.4 Within seven (7) calendar days after submission of the Recovery Plan by Contractor, Owner shall advise Contractor in writing whether or not to proceed with the Recovery Plan as submitted, or in accordance with reasonable revisions thereto established by Owner. Any such notice to proceed

shall be by a Construction Change Directive. As part of such notice, Owner shall have the right to require Contractor to work its own construction crews and Subcontractors and other personnel overtime, and to direct Contractor to take all other necessary action, including, without limitation, increasing the number of personnel and implementing double shifts, all at no increase to the Guaranteed Maximum Price. Such overtime work and other actions shall continue until such time as the Work has progressed so that it complies with the stage of completion required by the then most recently Owner approved Project Schedule. Additional costs incurred due to such overtime work and other actions shall not result in any adjustment in the Guaranteed Maximum Price.

11.8.5 Contractor's failure after written notice to provide a Recovery Plan within the time requirements and to the extent required in this *Section 11.8*, or to immediately implement a

Recovery Plan upon receipt of a Construction Change Directive to do so, shall be material breaches of this Contract.

11.9 Accelerations for Owner's Convenience

11.9.1 In the event Owner desires to accelerate the Project Schedule for reasons other than delays caused by or attributable to the Contractor, Owner shall so notify Contractor in writing.

11.9.2 Upon receipt of such written instruction, Contractor shall require its personnel and its Subcontractors and Vendors to work such overtime hours and/or to increase their respective work forces as are reasonably necessary to meet Owner's acceleration goals.

11.9.3 In the event such an acceleration is ordered by Owner, Contractor shall be entitled to an adjustment in the Guaranteed Maximum Price determined in accordance with Article 18 of this Agreement.

11.10 Schedule Coordination

11.10.1 Contractor shall schedule and coordinate the performance of the Work by Contractor's personnel, and Subcontractors and Vendors of any tier, in a manner that will enable Contractor to achieve Interim Milestones by the respective Interim Milestone Dates and completion within the Contract Time. Contractor acknowledges that at least a portion of the Work will be performed under joint occupancy conditions at the Site.

11.10.2 Contractor shall cooperate with Owner and Owner's other contractors so that both the Contractor's Work and the work of others will progress smoothly with a minimum of disruptions and interference to any party.

11.10.3 Contractor shall schedule its Work and Project delivery of materials to comply with all reasonable requests and suggestions of Owner in order to maintain the Project Schedule within the limitations of all existing Site conditions and business operations of Owner.

11.10.4 Contractor shall use all best efforts to not utilize any labor, materials or means whose employment or utilization during the course of this Contract may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar trouble by workman employed by its Subcontractors, or by any of the trades working in or about the Project and Site where Work is being performed under this Contract, or by other contractors or their subcontractors pursuant to other contracts, or on any other project and project site or premises owned or operated by Owner. Any violation by Contractor of this requirement may be considered as proper and sufficient cause for declaring Contractor to be in default, and for Owner to take action against Contractor as set forth in the Contract Documents.

11.10.5 In case of disagreements or disputes regarding the schedule of Work by other contractors or unnecessary interference to the Work caused by lack of cooperation between other contractors and Contractor, Contractor shall fully cooperate to resolve any disputes with or between other contractors. In case of disagreements or disputes between two or more contractors, Owner shall be consulted and Owner's decisions as to proper methods for coordinating the Work shall be final.

11.11 Flow-Down Provisions

11.11.1 Contractor shall include the requirements of this Article 11 in all of its subcontracts and purchase orders and shall use its best efforts to require Subcontractors and Vendors with agreements totaling in excess of $5,000,000.00, and shall require all Subcontractors and Vendors with agreements totaling in excess of $25,000,000, to include the same provisions in all sub-tier subcontracts and sub-tier purchase orders.

11.11.2 Contractor shall be responsible to fully indemnify and hold Owner harmless from any and all liens, claims, lawsuits, costs and expenses, including attorneys' fees, which may arise out of either the failure of the Contractor to fulfill its obligations pursuant to this Article 11 and/or the Contractor's failure to enforce the flow-down provisions as stated above.

11.12 Partial Occupancy Or Use. Owner may occupy or use any completed or partially completed portion of the Work at any stage, including opening portions of the Project to the public. Notwithstanding any other provision of the Contract, any such partial occupancy or use shall not: (a) constitute final acceptance of any Work, or (b) relieve Contractor of responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities under the Contract Documents; provided, however, Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy and use by Owner. Contractor shall cooperate fully with Owner, as Owner may request, in all aspects of Owner's partial use and occupancy of the Work and Project, including, without limitation, scheduling, allocation of utilities, access and storage, and all other arrangements. Unless and until Owner issues a Certificate of Substantial Completion pursuant to *Section 12.1* below for such portion of the Work partially occupied or used by Owner, Owner shall not be obligated to pay (but may in its sole discretion elect to pay) Contractor Retainage relating to such portion of the Work at that time partially used or occupied by Owner, and it is the express intent of Contractor and Owner that Contractor waive the benefits of Section 624.620 of Nevada Revised Statutes.

11.13 Other. Subject to Owner making payment to Contractor of all amounts then due and owing to Contractor under and subject to the Contract Documents, Contractor agrees to prosecute the Work and to require all trade contractors to prosecute the Work in a timely and proper method and manner so as to meet the dates reflected on the Project Schedule, including the Guaranteed Date of Substantial Completion.

ARTICLE XII.
SUBSTANTIAL AND FINAL COMPLETION

12.1 Substantial Completion Procedures and Requirements

12.1.1 Notice of Substantial Completion. "*Substantial Completion*" means the stage in the progress of the Work when (a) the Work in its entirety, or a designated portion thereof which Owner agrees to accept separately, is sufficiently complete in accordance with the Contract Documents and all applicable Laws to enable Owner to fully occupy and utilize the Work, or such designated portion thereof which are requested in writing by Owner, for all of its intended purposes and all aspects of such Work and the Project can be open to the general public; (b) all Project systems included in the Work (including, without limitation, all life safety systems) are operational and functioning as designed and scheduled; (c) all instruction of Owner's personnel in the operation of the Project systems has been completed; (d) all final finishes within the Contract are in place; (e) the Work is otherwise satisfactory to Owner in accordance with the Contract Documents; and (f) no liens, claims or encumbrances have been filed or are outstanding with respect to the Work. In general, the only remaining Work shall be minor in nature, so that Owner could occupy the building(s) comprising the Project and fully utilize such building(s) on that date, and all elements are fully functionable and operable as provided in the Contract, and the Final Completion of the Work by Contractor would not materially interfere with, disrupt or hamper Owner's use, occupancy or enjoyment of the Project, including the intended normal business operations of the Project, or detract from the aesthetic appearance of the Project. Contractor shall request an inspection for purposes of Substantial Completion in writing when the Contractor considers that the Work in its entirety, or a designated portion thereof which Owner has previously agreed in writing to accept separately, is substantially complete in accordance with all requirements in the Contract Documents.

12.1.2 Procedures For Substantial Completion. Procedures to be utilized to determine Substantial Completion of the Work in its entirety, or a designated portion thereof, shall be as follows:

12.1.2.1 Either party may initiate procedures for Substantial Completion of the Work in its entirety or a designated portion thereof, but Owner shall not be required to make a determination and accept partial Substantial Completion unless: (a) specific areas or phases of the Work are designated for partial Substantial Completion by Owner; or (b) Owner assumes physical possession of a portion of the Work solely for purposes of Owner's full use and occupancy. The use or occupancy of a portion of the Work by Owner or its other contractors to inspect and/or correct defective workmanship pursuant to Article 10 of this Agreement or install FF&E or other work shall not be considered as use and occupancy.

12.1.2.2 Unless waived by Owner in writing, Substantial Completion of either the Work in its entirety or a designated portion thereof shall not occur earlier than the date of all designated or required governmental certificates of occupancy and other permits, inspections and certifications for the Project or such portion thereof as the case may be, have been achieved and issued to Owner by the relevant governmental authority, and posted for the Project or such portion thereof, by the relevant governmental authority (provided that a temporary certificate of occupancy ("*TCO*") rather than a permanent certificate of occupancy may have been achieved and issued to Owner, and posted, so long as the obtaining of a temporary, rather than a permanent, certificate of occupancy does not prevent any aspect of the Project from being open to the general public).

12.1.2.3 If Owner or Owner's Lenders disagree that Substantial Completion has been achieved, Owner shall provide the Contractor with an advisory opinion of the items which should be completed or corrected for purposes of Substantial Completion. Owner's failure to advise Contractor of any items specified in the Contract Documents shall not alter the Contractor's responsibility to complete all Work necessary for Substantial Completion in accordance with the Contract Documents.

12.1.2.4 Upon receipt of Owner's advisory opinion, Contractor shall complete and/or correct all listed items. Contractor shall then submit its request to Owner for another inspection to determine Substantial Completion. Such subsequent inspection or re-inspections to determine if the Work is acceptable for purposes of Substantial Completion shall be made jointly by Owner and Contractor.

12.1.2.5 Prior to the issuance of a Certificate of Substantial Completion by Owner, the parties shall develop a final punch list which must be completed prior to Final Completion. The final punch list shall include the Contractor's Punch List Items and other incomplete or missing items which Owner elected in its discretion to waive for purposes of Substantial Completion.

12.1.2.6 Immediately prior to the issuance of a Certificate of Substantial Completion, Owner and Contractor shall jointly inspect and document the condition of the Work, or designated portion thereof, at the time of Owner's initial possession to determine and record its condition. Such inspection and acceptance by Owner shall not, however, alter the Contractor's responsibility to complete all Work necessary for Final Completion in accordance with the Contract Documents, including items discovered by Owner after Substantial Completion.

12.1.2.7 Owner shall have the final decision as to whether or not Contractor has achieved Substantial Completion. When Owner determines that the Work in its entirety, or a designated portion thereof, is substantially complete and a TCO has been obtained therefor,

Owner shall prepare and issue a "*Certificate of Substantial Completion*," which shall certify the date of Substantial Completion.

12.1.3 Limitations. Notwithstanding any provisions in the Contract Documents which may indicate otherwise, Owner's acceptance of partial Substantial Completion and the possession, use and occupancy of any portion of the Work prior to Substantial Completion of the Work in its entirety, shall not in any manner constitute a waiver by Owner of any of the provisions or requirements of the Contract Documents, including, but not limited to, Contractor's warranty obligations set forth in Article 10 of this Agreement and Contractor's obligations to achieve the Contract Time set forth in Article 4 of this Agreement.

12.2 Final Completion Procedures and Requirements

12.2.1 Contractor's Notice of Final Completion. "*Final Completion*" means that stage in the progress of the Work when Owner and Owner's Lenders determine that the Work has been properly completed and equipped by Contractor in accordance with the Contract Documents, including (a) completion of all punch list items (including Contractor's Punch List Items), (b) the submittal to Owner of all documentation as described in the Contract Documents, (c) completion in compliance with all applicable Laws, and (d) all obligations of Contractor under the Contract Documents (except for those obligations which are intended to be satisfied after Final Completion) are fully satisfied, and the Work is otherwise satisfactory to Owner and Owner's Lenders. When Contractor considers that the Work is finally complete, Contractor shall so notify Owner in writing requesting a Certificate of Final Completion. Such notice shall be accompanied by, and it shall be a condition to Final Payment and Final Completion that Contractor deliver to Owner, the following:

12.2.1.1 An affidavit that all payrolls (including all union dues, health, welfare, pension plan and other labor associated contributions), invoices for all labor, materials and equipment and all other indebtedness connected with the Work for which Owner or its property might in any way be responsible, and for which Owner has paid the Contractor, have been paid or otherwise satisfied.

12.2.1.2 Unconditional Final Lien Waivers from Contractor and all Subcontractors and Vendors and all other persons providing any services, labor or materials in relation to the Work, in the form of *Exhibit N* attached hereto, including certified copies of waivers of all liens filed during the course of the Work and not previously provided to Owner, and no liens, claims or other encumbrances have been filed or are outstanding with respect to the whole or any part of or interest in either the Site or the Work.

12.2.1.3 All final occupancy certificates obtained from any government authority and all other required approvals and acceptances as necessary or required for the full use and occupancy of all aspects of the Project by any city, county and state authorities having jurisdiction and not previously provided to Owner;

12.2.1.4 All written guarantees and warranties under the Contract for Contractor and Subcontractors and Vendors, all required operation and maintenance manuals for major equipment required under the Contract all in form and substance satisfactory to Owner; and assignment documentation assigning to Owner in form and substance satisfactory to Owner any remaining warranties and guarantees pertaining to the Work and not previously provided and assigned to Owner, and Contractor agrees to assist Owner in the prosecution and enforcement of all such assigned warranties and guarantees.

12.2.1.5 An affidavit certifying that Contractor has timely paid all federal, state and local taxes due arising out of the Work in a form satisfactory to Owner.

12.2.1.6 An affidavit certifying that Contractor shall maintain completed operations insurance in amounts required by the Contract Documents for a period of two (2) years after Final Completion and a certificate of the insurer evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be cancelled or allowed to expire until at least 60 days' prior written notice has been given to Owner.

12.2.1.7 All operating, maintenance, servicing and cleaning manuals and instructions, spare parts, maintenance stocks and spare materials provided by Subcontractors and Vendors and/or reasonably required by Owner for beneficial use of the Work for its intended purpose, and if requested by Owner adequate verbal instructions in the operation of mechanical, electrical, plumbing and other systems.

12.2.1.8 A complete and accurate set of as-built Drawings pursuant to *Section 7.14* of this Agreement, which clearly delineate any changes made to the latest approved Drawings and Specifications.

12.2.1.9 An accounting of the credits due Owner for the value of any excess items paid for by Owner and a complete detailed statement of the Cost of the Work showing, without limitation, all expenditures for which state or federal tax credits or deductions may be allowed.

12.2.1.10 Any documents, instruments, releases, affidavits, certificates and indemnities reasonably required in order to permit Owner and Owner's Lenders to secure endorsements in form and content satisfactory to them to their respective policies of title insurance for the Site, including without limitation that no mechanics or materialmen's liens appear of record, that all Lender Liens are of first priority (including prior to any unrecorded liens or other lien rights), and that there are no encroachments or violations of any recorded covenants, conditions or restrictions affecting the Site.

12.2.1.11 Such documents and other items so that Owner will receive and Owner does receive a release and complete refund without deduction or offset of all security, bonds and/or cash amounts provided by or on behalf of Owner and held by or for the benefit of any administrative or governmental agency.

12.2.1.12 If required by Owner or Owner's Lenders, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract or the Work which may then or in the future affect the Project or Site, and to the extent and in such form as may reasonably be designated by Owner or Owner's Lenders (if a Subcontractor or Vendor refuses to furnish a release or waiver required by Owner, Contractor shall within such time as set forth in *Section 7.19* hereof furnish a bond satisfactory to Owner to indemnify Owner against such lien and cause it to be paid and released; if such lien remains unsatisfied after payments are made, Contractor shall immediately refund to Owner and indemnify Owner against all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees).

12.2.1.13 Owner and Owner's Lenders shall have received (at Owner's expense) an updated survey of the Site showing the Work "as built."

12.2.1.14 Master, submaster and special keys with keying schedule.

12.2.1.15 Consent of any surety to Final Payment.

12.2.1.16 An OCIP audit to Owner's reasonable satisfaction.

12.2.1.17 Such other certificates, instruments and affidavits relating to the Work as Owner or Owner's Lenders may reasonably require.

12.2.2 Owner's Inspection For Final Completion. Upon receipt of Contractor's request for a Certificate of Final Completion and all submittals that comply with *Subsection 12.2.1* immediately above, Owner shall promptly make appropriate evaluations and inspections as follows:

12.2.2.1 If Owner considers that the Work is fully completed in accordance with the Contract Documents, Owner shall promptly so advise Contractor.

12.2.2.2 In the event that Owner or Owner's Lenders does not agree that Final Completion has been achieved, Owner shall promptly so advise the Contractor in writing of the remaining items to be completed for purposes of Final Completion.

12.2.2.3 After Contractor satisfies all remaining items necessary for Final Completion, Contractor may submit a further written notice to Owner stating that the Work is ready for re-inspection. All re-inspections to determine if the Work is acceptable for purposes of Final Completion shall be jointly made by Owner and Contractor.

12.2.2.4 Owner shall have the final decision as to whether Contractor has achieved Final Completion. When Owner agrees that the Work is finally complete, which agreement Owner agrees not to unreasonably delay, Owner shall prepare and issue a "*Certificate of Final Completion*," which shall set forth the date of Final Completion, and Owner may file a Notice of Completion.

ARTICLE XIII.
CONCEALED CONDITIONS AND UNCOVERING OF WORK

13.1 Concealed Conditions

13.1.1 In the event that unknown and concealed conditions are encountered in the Work which are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work, and which cause a delay in the critical path portion of the Work, and which: (a) are not identified in the Contract Documents, (b) were not otherwise known to Contractor, and (c) could not have been discovered by Contractor prior to the Effective Date through the exercise of due diligence consistent with the terms of the Contract Documents, then the Guaranteed Maximum Price and the Contract Time shall be subject to adjustment by Change Order and in accordance with *Section 11.6* hereof; provided, however, that Contractor must demonstrate its compliance with its representations including those set forth in *Section 7.1* of this Agreement.

13.1.2 Contractor shall notify Owner in writing within five (5) calendar days after the first observance of conditions described in *Subsection 13.1.1* immediately above.

13.1.3 It is understood and agreed that Owner shall not be liable for any costs arising out of concealed conditions that could have been discovered or anticipated by a prudent and experienced contractor through the use of due diligence and consistent with Contractor's obligations, representations and warranties in the Contract Documents. This includes, but is not be limited to, any costs arising out of the existence of obstructions such as utilities, pipelines, conduits or any easement or right-of-way limitations which are reasonably shown or inferable from the Contract Documents, or any obstructions which could have been reasonably discovered during Contractor's Site inspections or which are inherent in the Work and could have been reasonably anticipated by the Contractor (Contractor may utilize the Construction Contingency to cover costs relating to such items as provided in *Section 3.1.6* hereof).

13.2 Covering of Work

13.2.1 Contractor shall enable Owner to inspect all portions of the Work before they are covered.

13.2.2 If a portion of the Work is covered without providing Owner with adequate advance notice, or contrary to the request or direction of Owner or the provisions of the Contract Documents, Contractor shall, if required in writing by Owner, uncover the Work for observation. Such Work shall be replaced at Contractor's expense without change in the Contract Time.

13.2.3 If a portion of the Work has been properly covered in accordance with the Contract Documents and after sufficient advance notice to Owner, Owner may subsequently request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be paid by Owner. If such Work is not in accordance with the Contract Documents, Contractor shall be responsible for all costs and expenses of uncovering and replacement.

ARTICLE XIV.
INDEMNIFICATION

14.1 Indemnity

14.1.1 To the fullest extent permitted by law, Contractor hereby indemnifies and agrees to protect, defend, and hold Owner, Architect, Wynn Resorts, LLC, The Wynn Group, Wynn Design and Development LLC, Valvino Lamore, LLC and Owner's Lenders, and their respective subsidiaries, affiliates, parent companies and their respective members, officers, directors, managers, employees, agents, shareholders, successors and assigns, heirs, administrators, and personal representatives (collectively, "*Owner Indemnitees*") harmless from and against any and all claims, liabilities, obligations, losses, suits, actions, legal proceedings, damages, costs, expenses, awards, or judgments, including, without limitation, reasonable attorneys' fees and costs (whether or not suit is filed) (collectively "*Actions*"), any Owner Indemnitee(s) may suffer or incur or be threatened with and whether based upon

statutory, contractual, tort or other theory, that are: (i) imposed by law, or (ii) arise by reason of or relating directly or indirectly to (a) the death of or bodily injury to any person or persons, including, without limitation, employees of Contractor, (b) injury to property (including loss of use and the Work itself and including all costs for repair or replacement of work, materials, supplies or equipment (whether on or off Site or in transit), including whether lost, stolen, damaged or destroyed), equipment or material, including, without limitation, any of the same resulting or arising out of the performance of the Work performed by Contractor or any Subcontractor, or Vendor, (c) violation of or failure to comply with or abide by any Laws, or variations from the Contract Documents in the actual construction of the Work, (d) any infringement of the rights of any third party, including, without limitation, copyright and patent rights (in connection with which Contractor shall pay all royalties and license fees), (e) any stop notices, mechanic's liens or similar claims relating to any labor, services, materials, goods or equipment whether provided by Contractor, Subcontractor or any Vendor and relating to the Work, and (f) any breach or alleged breach of Contractor's warranties, representations, obligations, covenants or agreements set forth in the Contract, and (iii) relate to or arise out of or result from, directly or indirectly, the performance of the Work, or from any act or omission of Contractor, or any Subcontractor, or Vendor, anyone directly or indirectly employed by them, or anyone for whose acts any of them are liable or responsible at law or under the Contract Documents, regardless of whether or not such Action is caused by an Owner Indemnitee (subject to *Section 14.4* below).

14.1.2 To the fullest extent permitted by law, Owner hereby indemnifies and agrees to protect, defend, and hold Contractor, and its subsidiaries, affiliates, parent companies and their respective members, officers, directors, employees, agents, shareholders, successors and assigns,

heirs, administrators, personal representatives (collectively, "*Contractor Indemnitees*") harmless from and against any and all claims, liabilities, obligations, losses, suits, actions, legal proceedings, damages, costs, expenses, awards, or judgments, including, without limitation, reasonable attorneys' fees and costs (whether or not suit is filed) (collectively "*Actions*"), any Contractor Indemnitee(s) may suffer or incur or be threatened with and whether based upon statutory, contractual, tort or other theory, that are: (i) imposed by law, or (ii) arise by reason of or relating directly or indirectly to (a) the death of or bodily injury to any person or persons, including, without limitation, employees of Owner, (b) injury to property and (c) any breach or alleged breach of Owner's warranties, representations, obligations, covenants or agreements set forth in the Contract, and (iii) relate to or arise out of or result from, directly or indirectly, any act or omission of Owner, regardless of whether or not such Action is caused by a Contractor Indemnitee (subject to *Section 14.4* below).

14.2 Defense Costs. Subject to the limitations set forth in *Section 14.3* immediately below, the indemnification provisions of *Section 14.1* above, including defense costs, shall include all attorneys' fees, investigation costs, expert witnesses, court costs, and other costs and expenses incurred by the Owner Indemnitees and Contractor Indemnitees, as the case are, to the extent their interests appear.

14.3 Hazardous Materials. Contractor, its Subcontractors, and Vendors shall have no responsibility for the discovery, presence, handling, removal or disposal of pre-existing hazardous materials discovered on the Site, including asbestos, asbestos products, poly-chlorinated biphenyl (PCB) or other substances classified as hazardous by the Environmental Protection Agency of the U.S. Government or any other federal, state or local government agency, except to the extent addressed or covered in the Contract Documents or otherwise made known to or reasonably foreseeable by Contractor. If Contractor discovers the presence of any hazardous materials at the Site not otherwise called out in the Contract Documents or otherwise made known to or reasonably foreseeable by Contractor, Contractor shall promptly report the presence and precise location of any such materials to Owner and immediately stop Work in the affected area unless requested otherwise by Owner.

14.4 Other Limitations. Subject to the provisions of this *Section 14.4*, the obligations in *Section 14.1*above shall apply to and include those claims, causes of action, damages, liabilities, losses, obligations, awards, judgments, costs and expenses arising from the negligent, tortuous, intentional or other acts of the Owner Indemnitees or Contractor Indemnitees, as the case may be, and such indemnification obligations are primary to any insurance in the names of the Owner Indemnitees or Contractor Indemnitees. In the event of contributory negligence by any Owner Indemnitee or Contractor Indemnitee, as the case may be, the indemnifying party shall only be liable for payment of such claims and losses (including defense costs) in direct proportion to the indemnifying party's percentage of fault, if any, as determined by a court of competent jurisdiction, or as may be mutually agreed upon by Owner and Contractor. The indemnification obligations in this Article 14 shall not be construed to negate, abridge, or reduce other rights or obligations of Contractor or Owner, including, but not limited to, any obligation of indemnity which would otherwise exist at law or otherwise in favor of an Owner Indemnitee or Contractor Indemnitee. If any Action occurs or is threatened, the indemnifying party shall defend the Owner Indemnitees or Contractor Indemnitees, as the case may be, with counsel reasonably acceptable to such Indemnitee, at the indemnifying party's expense, unless such Indemnitee elects to defend itself, in which case the indemnifying party shall pay for such Indemnitee's reasonable defense costs. The indemnification obligation of Contractor (or any Subcontractor) and Owner under this Article 14 or otherwise under the Contract Documents, shall not be limited in any way by any limitation on the amount or type of insurance coverages carried whether pursuant to the Contract Documents or otherwise, the amount of insurance proceeds available or paid (except the indemnifying party shall be entitled to an offset against their indemnity obligation to the extent of any insurance proceeds actually received by the indemnitee, without condition or reservation, relating to any Action for which the indemnitee seeks to be indemnified pursuant to an indemnity in this

Agreement), or any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor or Owner or other person or entity under workmen's compensation acts, disability benefit acts or other employee benefit acts. Provided, however, the liability limitations of *Section 4.4* hereof shall apply to and limit Contractor's indemnity obligations in this Article 14 solely to the extent relating to damage for delay as set forth therein, and the liability limitations and releases in favor of Owner set forth in the Contract Documents, including *Sections 11.7*, *17.2.2*, *17.3.2*, *17.4*, and *17.6* of this Agreement, shall be and are express limitations on Owner's indemnity obligations under this Article 14 (and all such indemnity obligations are expressly subject to any and all limitations on Owner's liability set forth in the Contract Documents).

14.5 Survival of Indemnification Provisions. The Contractor's indemnity obligations set forth in this Article 14 shall apply irrespective of whether or not any Subcontractors or Vendors obtain or fail to obtain insurance coverages as required herein, shall apply during the performance of any Work, and along with Owner's indemnity obligation in this Article 14 shall survive any termination of this Contract or the Final Completion of the Work.

14.6 Risk. Except to the extent expressly covered by the OCIP referenced in Article 15 below or otherwise expressly provided for in the Contract Documents, all Work (i) covered by the Contract Documents, (ii) done at the Site, (iii) in preparing or delivering materials or equipment, or (iv) providing

services for the Project, or any or all of them, to or for the Project, shall be at the sole risk of Contractor.

ARTICLE XV.
INSURANCE

15.1 Owner Controlled Insurance Program

15.1.1 The Owner, at its expense, has implemented an Owner Controlled Insurance Program ("*OCIP*") to furnish certain insurance coverages with respect to on-Site activities. The OCIP will be for the benefit of the Owner and Contractor and Subcontractors of all tiers (unless specifically excluded) who have on-Site employees. Such coverage applies only to Work performed under the Contract Documents at the Site. The OCIP shall not include, and the Owner shall not be responsible for providing, any insurance coverages other than those specifically identified in the OCIP Manual (described in *Section 15.1.2* below). In addition, the first $25,000 of each loss or damage covered under the Builder's Risk Insurance policy, or uninsured losses, shall be paid for by the responsible Contractor or Subcontractor. The Builder's Risk insurance provided by Owner also does not cover loss of, or damage to, any tools, implements, equipment, scaffolds, formwork, machinery, cranes, consumables, office trailers, tool sheds, temporary structures or anything else which is not intended to become a permanent part of the finished Project. The Contractor and eligible Subcontractors must provide their own insurance for off-Site activities and automobile liability pursuant to the OCIP Manual, and the costs of such insurance for Contractor shall be a Cost of the Work. To the extent Contractor and or any Subcontractor becomes ineligible for the OCIP or is no longer covered by the OCIP, Contractor and such Subcontractor shall provide all required insurance under the OCIP Manual as a Cost of the Work.

15.1.2 Details concerning the OCIP are provided in the OCIP Manual which is attached hereto as *Exhibit P* and incorporated herein by this reference, and which has been made available to Contractor and its Subcontractors, for use in preparing their bids and estimates and in planning the performance of their Work. Contractor and each Subcontractor will participate in the OCIP established for the project in accordance with the OCIP Manual. Participation in the OCIP is mandatory but not automatic. Contractor shall, and Contractor shall cause all Subcontractors to, complete all forms, submit the information required and abide by the mandates established in the OCIP Manual. Any exceptions to this requirement must be approved by Owner.

15.1.3 The Guaranteed Maximum Price agreed to by the parties under this Contract reflects a credit of $18,000,000.00 as provided in Column C of *Exhibit F* attached hereto, based upon the parties' best efforts to estimate the construction cost savings to be realized as a result of the Owner's furnishing of the insurance coverages provided under the OCIP. At the end of the Project, prior to Final Payment, the Guaranteed Maximum Price will be adjusted as a result of any variance between the actual savings amount and projected savings established by the foregoing credit amount, pursuant to the OCIP audit. Contractor shall use all best efforts to carefully review all Subcontractor and pricing information to ensure that Owner is not required to pay a second time as part of Cost of the Work, for insurance coverages Owner has already purchased under the OCIP. Contractor shall also ensure that any Change Orders entered into pursuant to this Contract are priced so as to define all insurance costs to the reasonable satisfaction of the OCIP Manager.

15.2 Evidence of Coverage

15.2.1 Carriers Acceptable To Owner. All policies required of Contractor and Subcontractors pursuant to this Contract shall be maintained with insurance carriers that are acceptable to Owner and licensed in the State of Nevada.

15.2.2 Failure to Comply. Neither the Contractor nor any of its Subcontractors shall be entitled to receive payment for any Work performed, or to commence operations or Work on the Site or elsewhere until such time as they provide acceptable evidence of compliance with the requirements of this Article 15. Any additional costs or delays caused by or arising out of any failures to comply with this Article 15, including the failure to furnish acceptable Certificates of Insurance prior to date of the Date of Commencement, shall be solely the responsibility of Contractor and its Subcontractors.

15.3 Deductibles. If any policy required to be purchased pursuant to this Contract is subject to a deductible, self-insured retention or similar self-insurance mechanism which limit or otherwise reduces coverage, the deductible, self-insured retention or similar self-insurance mechanism shall be subject to Owner's and Owner's Lender reasonable approval and the responsibility of solely the Contractor in the event of any loss arising out of the acts or omissions of the Contractor, any Subcontractor or Vendor.

15.4 Cooperation by the Parties. Owner and Contractor shall fully cooperate with each other in connection with the collection of any insurance monies that are due in the event of a loss. Owner and Contractor shall promptly execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining recovery of any such insurance monies.

15.5 Duration. All General Liability, Automobile Liability, Worker's Compensation and Employer's Liability insurance required by this Contract shall be kept in force without interruption until Final Completion of the Work in accordance with *Section 12.2* above. Contractor and its Subcontractors shall maintain completed operations insurance for a period of two (2) years after Final Completion of the Work. The Builder's All-Risk Insurance shall remain in force until Contractor has achieved Final Completion of the Work in its entirety in accordance with *Section 12.2* above.

ARTICLE XVI.
SAFETY AND COMPLIANCE

16.1 Contractor's Site Safety Responsibilities. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and without limiting the foregoing, shall take all reasonable precautions for the safety of, and shall provide for all reasonable protections against loss of production time and prevent injury to, any of its employees, Subcontractors, Vendors, or their respective employees or any other persons who may be affected thereby, and all other persons at the Site or adjacent or nearby to the Site. Contractor shall prepare a site safety plan and submit such plan to Owner for review and comment prior to the

commencement of Work. Such plan shall identify the location of the fire safety system, alarm system, fire-fighting apparatus and exit routes. Safety gear shall be provided for representatives of Owner, Owner's Lender's and Architect's personnel and all others while on Site. Contractor shall designate a person responsible for job safety. This person shall be thoroughly familiar with Contractor's safety manual and Owner's Project Construction Safety and Health Guidelines (described below), and shall require compliance of all applicable provisions of such manual and Guidelines. Contractor shall keep a copy of such manual and Guidelines on the Site. Contractor shall familiarize all Subcontractors and Vendors on safety measures.

16.1.1 Contractor shall, and shall cause Subcontractors and Vendors to, take all precautionary measures as required by applicable laws to prevent and correct fire causing conditions, and shall conduct all operations with due regard for the avoidance of fire hazards. Contractor shall exercise the greatest care to prevent fires. The following minimum precautions shall be taken by Contractor and Contractor shall cause each Subcontractor and Vendor to take the following actions with regard to the Work:

16.1.1.1 Flammable liquids shall be stored in closed, approved, covered metal containers, and as approved by the fire wardens. All paint and oily rags shall be stored in approved containers and removed daily.

16.1.1.2 Each gasoline or diesel powered vehicle shall carry a fire extinguisher of adequate size and type to extinguish a fire emanating from either the vehicle or its load.

16.1.1.3 Contractor shall maintain a system of prompt detection and correction of unsafe practices and conditions, and shall furnish and maintain all necessary first aid equipment in a special location on the Site. Contractor shall investigate all accidents promptly to determine cause and to take necessary corrective action, and shall file required reports.

16.1.1.4 No exit, corridor, or stairwell shall be used for storage of materials of any type.

16.1.1.5 All exits, corridors and stairwells must be accessible and free of materials of any type except as necessary for the Work. Minimum exit widths as required by Laws shall be maintained at all times.

16.1.1.6 Hard hat and construction areas shall be identified and posted. All workmen and personnel in these areas shall wear a hard hat.

16.1.1.7 All electrical equipment and tools shall be of an adequate size to accomplish the task at hand and shall be properly grounded.

16.1.1.8 Face, eye and respiratory protection shall be available and used when the situation requires.

16.1.1.9 Provide and maintain suitable protections and enclosures around shafts, stairs and other openings in floors.

The foregoing requirements are not intended to be exclusive or exhaustive, and Owner shall not have any liability in any way relating to any of the foregoing or the absence of other requirements from the foregoing. Contractor shall be solely responsible to Owner for providing the Site a safe place to work for all persons (provided, however, Contractor shall not be responsible for the foregoing with regard to that portion of the Site under the control of the contractor for the parking garage). Contractor also agrees to and shall cause all Subcontractors and Vendors to, abide by Owner's Project Construction Safety and Health Guidelines (as the same may be amended, modified and supplemented from time to time by Owner), attached as *Exhibit O* to this Agreement.

16.2 Compliance. In addition to the requirements of *Section 16.1* immediately above, Contractor shall give all notices, file all reports and obtain all permits which are applicable to the Contractor's

operations or performance of the Work. Upon request, Contractor shall furnish Owner and Owner's Lenders with copies of all such notices, statements, reports, certificates or permits evidencing compliance. Contractor shall also keep Owner informed of any changes in Laws which may affect Contractor's performance of the Work or Owner's use thereof. Contractor shall indemnify, defend and save harmless Owner and the other Owner Indemnitees from and against any and all claims, losses, liabilities, fines or penalties in any manner arising out of Contractor's failure to comply with this Article 16.

ARTICLE XVII.
TERMINATION OR SUSPENSION OF THE CONTRACT

17.1 Material Default By Contractor. Owner may, following expiration of the applicable period described in *Section 17.1.1* below, and without prejudice to any other rights or remedies of Owner, terminate this Contract in its entirety, or may elect to terminate any portion of the Contractor's Work, for default if the Contractor, including any Subcontractor or Vendor, fails to perform any of its material obligations under the Contract Documents, including fails to perform the Work in a diligent, expeditious, workmanlike and careful manner strictly in accordance with the Contract, or any breach of its material obligations in the Contract Documents. Upon such default, Owner may take possession of the Site and of all materials, tools, equipment and machinery thereon and may finish the Work by whatever method Owner may in good faith deem desirable and or expedient (or may elect not to finish the Work).

17.1.1 Notice Of Default By Owner. The Contractor shall promptly correct any default to Owner's satisfaction within five (5) calendar days following receipt of written notice of default from Owner. If correction within said five (5) days is not possible, Contractor shall commence and diligently continue effective action to correct such default to Owner's satisfaction, but not later than sixty (60) days following receipt of Owner's notice (except for such longer period as may otherwise be reasonably approved in writing by Owner and Owner's Lenders). In the event that the Contractor fails to take and diligently pursue effective corrective actions, Owner may hold in abeyance further payments to Contractor and/or terminate the Contract by written notice specifying the date of termination and without prejudice to any other remedy Owner may have.

17.1.2 Other Defaults. Owner may also elect to declare Contractor in material default and may terminate Contractor immediately upon written notice (unless a longer period is otherwise expressly provided in this Agreement with regard to the matter in *Sections 17.1.2.1* through *17.1.2.5* below, it being agreed that the cure periods in *Section 17.1.1* above do not apply to *Sections 17.1.2.1* through *17.1.2.5*) and/or take such other action as Owner may be allowed, in the event of any of the following:

17.1.2.1 The commencement of an action or petition by or against Contractor under applicable bankruptcy laws, or any general assignment by Contractor for the benefit of its creditors or the appointment of a receiver or trustee to take charge of Contractor's assets;

17.1.2.2 Contractor's insolvency;

17.1.2.3 The recordation of a mechanics' or materialmens' lien on the Site or the Work by a Subcontractor, Vendor, laborer, materialman, or supplier or any other party providing services or material engaged by, on behalf of, or acting under the direction of Contractor or any Subcontractor or Vendor in connection with the Work, provided that such lien is not removed of record or satisfied by bond or other security, in an amount and with a bonding company reasonably satisfactory to Owner and Owner's Lenders within the time periods set forth in and pursuant to *Section 7.19.2* hereof;

17.1.2.4 Failure of Contractor for five successive days or an aggregate of seven days in any thirty (30) day period (other than Sundays or national holidays), to have an adequate number of laborers or Subcontractors at the Site who are actively and productively working on the Project, unless a Force Majeure Delay or Owner Delay exists for such absence, unless within five (5) days after written notice from Owner Contractor has and thereafter maintains an adequate number of laborers and Subcontractors on Site actively and productively working on the Project;

17.1.2.5 Failure of Contractor after five days following request from Owner to provide Owner with satisfactory evidence of funds available to make up any overage with regard to the Guaranteed Maximum Price as required under *Section 3.1.3* of this Agreement; or

17.1.2.6 Failure of Contractor or Guarantor to comply with the provisions of *Section 4.6.2* hereof, within three (3) days after written notice to Contractor from Owner.

17.1.3 Stop Work Orders. In the event of any material breach or default of this Contract, and in lieu of declaring termination for default, Owner may elect to stop, delay, reduce or interrupt any operations of Contractor or any affected Subcontractors or Vendors until such default or failure is remedied to Owner's satisfaction. No part of the time lost due to stop work orders or delay, reduction or interruption by Owner arising out of such material breaches shall be made the subject of a claim for extension of time or for increased costs or damages by Contractor. No increase or upward adjustment shall be made in the Guaranteed Maximum Price or Contractor's Fee for, and in no event shall Owner be liable for, or Contractor or any Subcontractor or any other party performing any Work on the Site be entitled to, any lost opportunity, lost profit or consequential damages claimed or alleged by Contractor, any Subcontractor or any other party performing any Work on the Site and relating to any such stoppage, reduction, suspension, delay or interruption. The issuance of a stop work order or delay, reduction or interruption by Owner shall not prejudice Owner's right to subsequently terminate for default.

17.1.4 Owner's Rights Upon Termination For Default. If all or a portion of the Contractor's Work is terminated pursuant to this *Section 17.1*, Contractor shall not be entitled to receive any payment until after Final Completion by others and after Owner has assessed its additional costs and damages arising out of such termination, including, but not limited to, Owner's additional costs for completing all or the relevant portion of the Work. Upon such termination, Contractor shall immediately undertake all necessary steps to mitigate against Owner's damages, and shall:

17.1.4.1 Cease operations and vacate the Site to the extent specified in the notice of default;

17.1.4.2 Place no further orders and enter into no further subcontracts or purchase orders for materials, labor, services or facilities that relate to the terminated Work;

17.1.4.3 Upon Owner's request, terminate all subcontracts and purchase orders which relate to the terminated Work;

17.1.4.4 Upon request and as directed by Owner, assign (and/or Owner may accept the assignments made in this Agreement, as the case are) all of Contractor's right, title and interest to all subcontracts, purchase orders, rental agreements, materials, supplies and equipment using forms satisfactory to Owner and otherwise assist Owner in the orderly and expeditious transfer of such rights;

17.1.4.5 Turn over to Owner the originals of the Project Schedule and all Schedule Updates including all computer data bases on diskettes; all Drawings, Specifications and other construction documents; all as-built drawings, calculations and such other Work-related

documents and all items and things for whose cost Contractor requests or has requested reimbursement or payment;

17.1.4.6 Proceed to complete the performance of all Work not terminated;

17.1.4.7 Take such actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work;

17.1.4.8 Advise Owner of all outstanding subcontracts, rental agreements and purchase orders which Contractor has with others pertaining to the terminated Work and furnish Owner copies thereof;

17.1.4.9 Remove all of its property from the Site and Owner's premises. Any property not so removed may be removed by Owner at Contractor's expense; and

17.1.4.10 Allow Owner to take possession of all materials of any kind that have been paid for, that are to be incorporated into the Work, or to which Owner has any ownership rights or interest, and finish the Work and provide the materials therefor or contract with others to do so by whatever method Owner deems expedient and execute and do all such assurances, acts and things as Owner may consider expedient to facilitate

Owner's taking of possession of the Site and materials, equipment, machinery and tools thereon, and shall give all notices, orders and directions which Owner may think expedient for the purposes hereof.

17.1.5 Payment to Contractor

17.1.5.1 If Owner terminates the Contract for Contractor's breach or default, Contractor shall thereafter only be entitled to reimbursement (subject to *Section 17.1.5.3* hereof) only of such amount (if any), by which:

(a) the (i) Cost of the Work actually and properly completed by Contractor in accordance with the Contract Documents up to the date of such termination (and not cancelable or refundable), plus (ii) the pro rata portion of Contractor's Fee thereon (subject to satisfaction of the conditions applicable to progress and Final Payment contained in the Contract Documents as the case may be), but the foregoing amounts shall not exceed the portion of the Guaranteed Maximum Price (including Contractor's Fee) fairly allocable to the Work so completed, exceeds

(b) the total of (i) all payments theretofore made to Contractor under the Contract Documents, and (ii) all damages and other costs and expenses incurred by Owner directly or indirectly, arising out of or as a result of, Contractor's breach or default, including, without limitation, the cost of any additional consultants' services, or managerial and administrative services required thereby, any additional costs incurred in retaining another contractor or other Subcontractors, any additional financing, interest or fees and other costs that Owner must pay by reason of a delay in completion of the Work, Owner's termination of Contractor and the finishing of the Work by another method after such termination, attorneys' fees and expenses, and any other damages, costs, and expenses Owner may incur in completing the Work as a result of Contractor's breach or default including if Owner elects to complete the Project after such termination, the amount by which the actual cost of completing the Project (including components of the Project that are not part of the Work) is greater than what such actual cost (including the actual cost of components of the Project that are not part of the Work) would have been if Contractor had fulfilled its obligations under the Contract Documents, and if Owner elects to not complete the Project after such termination Contractor hereby acknowledges that Owner has the right to so elect without Owner waiving Contractor's liability for

damages arising out of the breach by Contractor that led to its termination, all damages suffered by Owner arising out of Contractor's breach of this Agreement.

17.1.5.2 If the amount referred to in *Section 17.1.5.1.(b)* hereinabove exceeds the amount referred to in *Section 17.1.5.1.(a)* hereinabove, Contractor shall pay the difference to Owner immediately upon Owner's demand.

17.1.5.3 Any reimbursements or payments made to Contractor under this *Section 17.1.5* are conditioned on (a) Contractor previously having delivered to Owner possession and unfettered access to the Work and Site and all materials, equipment, tools and the like (undamaged and in good condition) which Owner has paid for and/or been billed for, (b) all the applicable items listed in, and performance of all the applicable obligations described in *Section 12.2.1* of this Agreement have been satisfied, and (c) Contractor complies with such other obligations under the Contract Documents as Owner or Owner's Lenders reasonably requires.

17.2 Termination For Convenience. The parties' rights and remedies in the event of termination by Owner of all or a portion of the Work for Convenience shall be as follows:

17.2.1 Notice of Termination For Convenience. Owner may cancel this Contract in its entirety, or may elect to terminate any portion of the Contractor's Work, and take possession of the Site and all materials, tools, equipment and machinery thereon and finish or not finish the Work by whatever method Owner may desire, at any time upon written notice to Contractor solely for Owner's convenience and without regard to any fault or failure to perform by Contractor or any other party. Upon receipt of such notice of termination, Contractor shall immediately and in accordance with instructions from Owner proceed as follows:

17.2.1.1 Cease operations to the extent specified in the notice;

17.2.1.2 Place no further purchase orders and enter into no further subcontracts for materials, labor, services or facilities that relate to the terminated Work;

17.2.1.3 Cancel all subcontracts and orders that relate to the terminated Work;

17.2.1.4 Proceed to complete the performance of all Work not terminated;

17.2.1.5 Take such actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work; and

17.2.1.6 Take such action, including those actions in *Section 17.1.4* hereof, as Owner may direct.

17.2.2 Payment Upon Termination For Convenience. In the event of termination for convenience, Contractor shall be paid as follows: Owner's sole obligation and liability to Contractor shall be (i) to reimburse Contractor (and Contractor's exclusive remedy shall be to receive reimbursement) for the Cost of the Work incurred (and not cancelable or refundable) by Contractor for Work properly performed and completed by Contractor up to the date of termination and approved by Owner in accordance with the Contract, plus (ii) that pro-rata portion of Contractor's Fee applicable to such completed Work (and subject to satisfaction of the conditions applicable to payments to Contractor set forth in the Contract Documents, including for progress payments, and Final Payment as applicable), but not in excess of the portion of the Guaranteed Maximum Price equitably allocable to such Work based on the percentage such properly performed and completed Work by Contractor bears to the total Work included within the Guaranteed Maximum Price, less all payments previously made to Contractor under the Contract and any amounts owed by Contractor to Owner under the Contract.

17.3 Suspensions By Owner

17.3.1 Owner's Right To Suspend For Convenience. Owner may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as Owner elects by giving Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until Owner terminates such suspension, delay or interruption by written notice to Contractor. No such suspension, delay, interruption or reduction by Owner shall constitute a breach or default by Owner under the Contract Documents. Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

17.3.2 Payment Upon Suspension For Convenience. In the event of suspension, delay, reduction or interruption for convenience by Owner, Owner shall pay Contractor and the Guaranteed Maximum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

17.3.2.1 Additional Costs of the Work, if any, which are incurred by Contractor, Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at Owner's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and Contractor's Work in progress caused solely by such suspension, delay or interruption ordered by Owner for convenience, but the Guaranteed Maximum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

17.3.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted Contractor's Work caused solely by such suspension, delay or interruption ordered by Owner for convenience, but the Guaranteed Maximum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

17.3.2.3 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which Contractor is responsible.

17.4 Limitations. Owner shall have no liability to Contractor or any Subcontractor or Vendor, and Contractor nor any Subcontractor or Vendor will make and they hereby waive any claim for (a) compensation, expenses, additional fees or anticipated profits for unperformed Work, (b) delays, acceleration or disruption, (c) lost business or other opportunities, (d) special, indirect or consequential damages or losses or loss of use, (e) impaired bonding capacity, (f) unabsorbed, unrealized or other overheads, or (g) general conditions costs attributable to a termination for convenience, suspensions, reductions, delays or interruptions for convenience (except to the extent provided in *Section 17.3.2* hereof) or breach, or a termination for default by Owner, and in no event shall there be any increase in the Guaranteed Maximum Price (except as expressly provided in Section 17.3.2 above) or Contractor's Fee as a result of any of the foregoing Owner elections under *Sections 17.2* or *17.3* above or due to any other delays. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

17.5 Other Rights and Remedies. Other rights and remedies available to Owner in the event of a default or material breach by Contractor which is not timely cured in accordance with *Section 17.1.1* hereof, shall include, but not be limited to, the following, and all such rights and remedies of

Contractor in this Article 17 shall be non-exclusive, and shall be in addition to all other rights and remedies available to Owner under the Contract, at law or otherwise:

17.5.1 A waiver by Owner of a default by Contractor shall not be considered to be a waiver of any subsequent default by Contractor, nor be deemed to amend or modify the terms of this Contract.

17.5.2 In the event of termination for cause, disputes as to whether a material breach of contract occurred within the provisions of the Contract Documents shall be subject to resolution pursuant to Article 22 of this Agreement. If Owner terminates this Contract in whole or in part for default and a court of competent jurisdiction later determines that such termination was improper or wrongful, then that portion of the improper or wrongful termination shall automatically convert into a termination for convenience, and such termination shall be treated as a termination for Owner's convenience pursuant to *Section 17.2* of this Agreement.

17.5.3 Owner shall have the right and is authorized to cure such defaults and offset against and deduct from amounts otherwise payable to Contractor any such costs, damages, attorneys' fees and any other expenses suffered by Owner and arising out of such default including any cure or attempted cure by Owner, and all consultants and professionals additional services.

17.5.4 Any termination pursuant to this Article 17 shall be without prejudice to any other right or remedy of Owner pursuant to the terms of the Contract Documents or at law.

17.6 Contractor's Remedies

17.6.1 If payment from Owner for an Application for Progress Payment (exclusive of amounts properly retained or withheld under the Contract), approved by Owner and Owner's Lenders in accordance with *Sections 5.2* and *5.3* of this Agreement, has not been received by Contractor within ten (10) days of the date payment is due pursuant to *Section 5.3* of this Agreement, interest shall thereafter commence to accrue (from the original due date of payment pursuant to *Section 5.3* hereof) on such delinquent amounts at then existing prime rate of Bank of America N.A. plus one percent (1%) as announced in the Wall Street Journal, until paid, and Contractor may upon written notice to Owner cease Work until such payment has been received, in which case the Guaranteed Date of Substantial Completion will be extended by the number of days of the cessation of Work, subject to the provisions of *Section 11.6* hereof. If payment of undisputed amounts to which Contractor is otherwise then entitled pursuant to the terms of this Agreement are not paid by Owner to Contractor within fourteen (14) days after the expiration of the ten (10) day period hereinabove and written notice by Contractor that the same are past due, Contractor may terminate this Agreement upon an additional five (5) business days' written notice to Owner.

17.6.2 If Contractor terminates this Agreement with cause in accordance with this Agreement and such termination is accepted by Owner or challenged by Owner but upheld by a court of competent jurisdiction, Contractor shall be entitled, as its exclusive remedy (but including *Section 24.7* hereof), to the recovery of the amounts (if any) to which Contractor would have been entitled had Owner, pursuant to *Section 17.2* of this Agreement,

terminated this Agreement for convenience effective as of the date this Agreement is so terminated by Contractor. Contractor, notwithstanding any provision of this Agreement or otherwise, shall in no event be entitled to or seek recovery of any other amounts (including, without limitation, consequential damages, lost profits, overhead, or similar amounts) in the event of any termination, including but not limited to under this *Section 17.6*.

ARTICLE XVIII.
CHANGE IN THE WORK

18.1 Change. A "*Change*" in the Work means an increase, decrease, variation, modification or change in Contractor's Work from that indicated in the Contract Documents, or modification to the Project Schedule. Suspensions and terminations for convenience shall be governed by Article 17 of this Agreement and shall not be considered a Change except to the extent provided therein. A Change can only be implemented by a Change Order or by Construction Change Directive. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or extension of the Contract Time. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

18.2 Change Order. A "*Change Order*" is a written instrument prepared by Contractor and signed by Owner and Contractor, stating their agreement upon all of the following:

(a) a Change in the Work including a full description of such Change;

(b) the amount of the adjustment, if any, in the Guaranteed Maximum Price; and/or

(c) the extent of the adjustment, if any, in the Contract Time.

Methods used in determining adjustments to the Guaranteed Maximum Price or Contractor's Fee may include those listed in *Section 18.4.3* hereof.

18.3 Change Proposal Request. At any time and from time to time prior to Final Completion of the Work, Owner may request Contractor to make Changes in the Work. If Owner desires a Change in the Work Owner may, in its sole and absolute discretion and in writing, request a Change Proposal from Contractor ("*Change Proposal Request*"). A Change Proposal Request shall set out, in reasonable detail, the Changes in the Work requested by Owner. Within ten (10) days following its receipt of a Change Proposal Request, Contractor shall issue a Change Proposal (as defined in *Section 18.3.1* below). Contractor shall also issue a Change Proposal: (i) when Contractor reasonably believes that a Change in the Work is necessary or desirable; or (ii) when a Change in the Work is made necessary by Laws. If Contractor refuses or fails to timely provide a Change Proposal, or modifies or alters a Change Proposal Request, or if Owner and Contractor are unable to agree in writing upon the terms of the Change Proposal, including but not limited to: (i) the amount of increase or decrease in the Guaranteed Maximum Price, or (ii) the length of extension or advancement, if any, of the Contract Time, Owner: (a) may issue a Construction Change Directive pursuant to *Section 18.4* hereof, (b) may require Contractor to obtain at least three bids from qualified subcontractors to perform such Change in the Work, and Owner may designate the subcontractor from said bidders to perform such Change in the Work, or (c) may engage other contractors, subcontractors and/or laborers to perform such Change in the Work, and Contractor shall cooperate fully with any such persons, and any such hiring by Owner or issuance of a Construction Change Directive shall not affect this Agreement in any manner (other than to provide for a reduction in the Guaranteed Maximum Price, equal to the value of such Work (but not less than the amount budgeted therefor in the Guaranteed Maximum Price) not being performed by Contractor, and in the Contractor's Fee applicable thereto) and shall not be deemed to be a constructive termination.

18.3.1 "*Change Proposal*" means a written proposal prepared and signed by Contractor setting forth (i) the Changes in the Work requested by Owner or proposed by Contractor, (ii) the amount of adjustment, if any, in the Guaranteed Maximum Price (including pursuant to *Section 18.4.3* below) due to such Change, and (iii) the extent of adjustment, if any, in the

Contract Time due to such Change. A Change Proposal is only a proposal unless and until signed and accepted by Owner as a Change Order. Contractor shall also submit a Change Proposal to fix the cost of Allowance Items in the Guaranteed Maximum Price.

18.4 Construction Change Directive

18.4.1 "*Construction Change Directive*" means a written order, requested by Owner, prepared by Owner or Architect, and signed by Owner, and given to Contractor, directing a Change in the Work and stating a proposed basis for adjustments, if any, in the Guaranteed Maximum Price or Contract Time, or either of them or either combination of them.

18.4.2 Owner may, by Construction Change Directive, without invalidating or breaching the Contract, order a Change in the Work or apply a portion of the Owner Contingency. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the Change in the Work involved (including implementing any reductions or accelerations in the Work) and advise Owner of the Contractor's agreement (in which case Contractor shall sign and return the Construction Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proper adjustment, if any, in the Guaranteed Maximum Price or Contract Time. Contractor agrees to immediately, when directed in writing by Owner, perform the Change in Work diligently and without delay.

18.4.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment may be based on one of the following methods:

(a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

(b) unit prices stated in the Contract Documents or subsequently agreed upon; or

(c)

cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, which cost shall be based upon a proposal by the appropriate party. Any proposals from Subcontractors shall not include any amounts for overhead and profit in excess of an aggregate of ten percent (10%) of the cost of such Subcontractor's Work, unless approved by Owner.

18.4.4 A Construction Change Directive signed and unmodified by Contractor indicates the agreement of Contractor therewith, including the method, if any, provided in the Construction Change Directive for determining the adjustment, if any, in the Guaranteed Maximum Price or Contract Time. Upon Contractor's written acceptance and delivery thereof to Owner of the unmodified Construction Change Directive, that Construction Change Directive shall become a Change Order. If Contractor fails to advise Owner of its agreement or disagreement with the proposed adjustment in the Guaranteed Maximum Price or Contract Time within ten (10) days after the delivery of the Construction Change Directive to Contractor, then the Construction Change Directive shall be deemed approved and shall become a Change Order, and Contractor shall have no right to any adjustment to the Guaranteed Maximum Price or Contract Time in excess of the adjustments, if any, provided in the Construction Change Directive.

18.4.5 If Contractor disagrees with the method or adjustment in the Guaranteed Maximum Price or the Scheduled Completion Date within the ten (10) calendar day time period provided in *Subsection 18.4.4* above, and the parties are unable within a reasonable period of time to reach an agreement, the matter shall be resolved under Article 22 of this Agreement.

18.5 Determination of Increases in Guaranteed Maximum Price

18.5.1 Notwithstanding any other provision in the Contract Documents, and regardless of pricing method for any Change, any increase in the Guaranteed Maximum Price as a result of net

Changes in the Work (including a Construction Change Directive), shall not exceed the sum of: (a) the aggregate additional amounts (if any) actually paid by Contractor to its Subcontractors and Vendors for the applicable Change in the Work, without mark-up or other add-on by Contractor, and (b) the actual increase (if any) in the Cost of the Work incurred by Contractor with respect to the applicable Change in the Work to the extent (if any) such Change performed by Contractor directly. Any and all amounts or items excluded from the determination of the Cost of the Work, including all Non-Allowable Costs of the Work, shall also be excluded from the determination of the cost of any Change in the Work.

18.5.2 Whether or not Contractor is entitled to an increase in the Guaranteed Maximum Price or modification of the Contract Time pursuant to the Contract as a result of any Changes in the Work, in no event shall Contractor be entitled to, and Contractor hereby waives any claim to, an increase in the Contractor's Fee, due to any and all such Changes. Notwithstanding the foregoing sentence in this *Section 18.5.2*, if the aggregate net amount of all Changes (as reflected by Change Orders) increases the Guaranteed Maximum Price by more than $30,000,000.00 over the original Guaranteed Maximum Price of $901,883,710.00 set forth in *Section 3.1* of this Agreement ("*GMP Increase*"), then subject to the terms of the Contract Documents Contractor's Fee shall be increased by an amount equal to 3.0% of the amount by which the Cost of the Work of all such Changes (when netted) exceed by $30,000,000 the original Guaranteed Maximum Price. Contractor has fully considered the impact of the foregoing limitation and acknowledgement, and accepts all consequences relating thereto.

18.6 Simultaneous Submittal Requirements. In the event that Contractor considers that any Change Proposal Request or Construction Change Directive may involve Changes to both the Guaranteed Maximum Price and the Contract Time, it shall be the Contractor's fundamental duty and an essential requirement of this Contract to make simultaneous submittals of all documents necessary to establish both such Changes in accordance with this Article 18, and to simultaneously prove entitlement to both such Changes, and without any reservation of rights for future consideration.

18.7 Continued Performance. Notwithstanding the status of any proposed, pending or disputed Change (including any Construction Change Directive) pursuant to this Article 18 or any Claim pursuant to Article 20 below, or any dispute, and so long as Owner continues to timely make payment to Contractor of amounts properly due Contractor under and subject to the terms of the Contract Documents and not in dispute, Contractor shall not be entitled to and will not suspend any services under the Contract Documents, but will continue to be bound by the terms and conditions of the Contract Documents and will continue to perform all services thereunder and proceed diligently with the performance of its Work in accordance with the terms hereof, including completing any Work described in any Construction Change Directive, unless Owner directs in writing otherwise.

18.8 Effect of Change Orders

18.8.1 Execution of a formal Change Order as defined in *Subsection 18.1.2* above shall be the sole procedure for settlement of any and all issues concerning the Guaranteed Maximum Price and/or Contract Time, including any settlement based on a Claim pursuant to Article 20 hereof or pursuant to Article 22 hereof.

18.8.2 No Change shall be deemed as settled unless and until the parties sign a formal Change Order which fully and finally settles all pending issues pertaining to increases or decreases in the Guaranteed Maximum Price and/or the Contract Time and without any reservation of rights for future consideration. In that regard, the parties hereby agree that a signed Change Order shall be inclusive of any and all direct, indirect, consequential costs, damages or losses based upon any theory of recovery; including, but not limited to: actual damages; all time-related costs; total costs; modified total costs; Eichleay formula or other equitable adjustment theories; full compensation for general conditions; extended site supervision and administration; all field, site, branch and/or

home office overheads; all general and administrative costs; and any other similar direct, indirect and/or time-related costs howsoever derived or formulated.

18.8.3 Any statement added by the Contractor to the face of an otherwise valid Change Order, or contained in any transmittal or separate correspondence wherein the Contractor attempts to reserve rights to seek any further increases in the Contractor's Fee, Guaranteed Maximum Price and/or Contract Time shall be null and void.

18.8.4 Once the actual cost of such Change and corresponding extension, if any, in the Contract Time have been determined, prior to using such actual cost to make any increase in the Guaranteed Maximum Price, or extension in the Contract Time, such actual cost and/or extension, as the case may be, shall be reduced and offset by any and all reductions or Changes in the Work which result in reduced Costs of the Work and/or advancement of the Contract Time, as the case may be (*i.e.,* changes in the Work shall be netted out).

18.9 Verbal Instructions and Minor Changes in the Work. Contractor shall not be entitled to rely upon, and shall not implement any Change based only on, Owner's verbal instruction, except in emergency situations and when necessary to prevent the imminent threat of personal injuries or damage to the Work or Owner's existing property, or for minor Changes within Contractor's scope of Work which do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time ("*Minor Changes*"). Such Minor Changes may be effected by written or verbal order at Owner's election at any time. If the Contractor does not agree that such order constitutes a Minor Change, Contractor shall submit a Change Proposal pursuant to *Section 18.3.1* above; provided, however, Contractor shall still promptly perform the Work specified in the instruction or order from Owner.

18.10 Waiver and Release of Contractor's Rights. Contractor hereby confirms its willingness and ability to comply with the requirements of this Article 18. Contractor's failure to first comply with the requirements of this Article 18, including the timely notice requirements, shall constitute a waiver and release by Contractor of any and all rights to pursue a Claim as defined in Article 20 below.

18.10.1 Surety Waivers. Individual Change Orders or Construction Change Directives as described in the Contract Documents which when combined do not in the aggregate exceed ten percent (10%) of the Guaranteed Maximum Price, shall not be subject to inspection or approval by Contractor's surety on any performance or labor and material payment bond, whether or not the Change Orders (or Construction Change Directives) encompass "substantial" Changes in the scope of Work undertaken by Contractor. Contractor and/or Owner shall provide notice to the bonding company or companies which are identified as the issuer(s) of the Contractor's Performance and Payment Bond pursuant to *Section 7.18.1* hereof (at the address provided in such Performance and Payment Bond), of the mutual execution of any Change Order that on a net basis increases the Guaranteed Maximum Price, and concurrent with such notice Owner shall provide notice to such bonding companies of the funding sources which Owner intends to utilize for such Change Orders.

ARTICLE XIX.
RECORD KEEPING AND AUDIT RIGHTS

19.1 Required Accounting Records. To facilitate audits by Owner or Owner's Lenders, including, without limitation, for any purpose related to Change Orders, Changes or Change Proposals, Contractor shall at all times implement and maintain, and require its Subcontractors and Vendors to implement and maintain, such cost control systems and daily record keeping procedures as may be necessary to attain proper fiscal management and detailed financial records for all costs related to the Work and as are otherwise reasonably satisfactory to Owner and Owner's Lenders. All cost and pricing data shall include, without limitation, the identification of any markups, vendor quotations and pricing

methodologies. Records to be maintained by the Contractor, its Subcontractors and Vendors for purposes of the Contract, including for purposes of all audits conducted pursuant to this Article 19 shall include, but not be limited to the following: (a) payroll records and payroll burden costs on actual wages and salaries (payroll taxes, insurance, benefits, etc.); (b) all correspondence, minutes of meetings, daily logs including schedule status reports, memoranda and other similar data; (c) items such as bids, proposals, estimating work sheets, quotes, cost recaps, tabulations, receipts, submittals, tax returns (except solely income tax returns), general ledger entries, canceled checks and computer data relating to the Work and this Contract, and (d) all other data relating to or arising out of the Work and any other similar supporting documentation reasonably required by Owner or Owner's Lenders. It is further agreed that records subject to audit include Project-related records maintained by parent companies, affiliates, subsidiaries or other related parties. Contractor's failure to cooperate or to provide access as described in this Article 19 shall be a material breach of this Contract.

19.2 Purpose and Extent of Record Access. Owner and Owner's Lenders, and their respective authorized representatives, shall have the right to fully and completely audit, copy, investigate and review, and shall be afforded useful access to all of the records described in *Section 19.1* above at all reasonable times (both during performance of the Work and after Final Completion) for purposes of inspection, audit, review and copying to the full extent as Owner or Owner's Lenders may require relating to the Work or the Contract. All such Contractor's records and records of all Subcontractors and Vendors shall also be made available to Owner for purposes related to compliance with Owner's business ethics policies. Upon request, Contractor shall also fully cooperate in arranging interviews with Contractor's employees and shall require all Subcontractors and Vendors to likewise fully cooperate pursuant to this Article 19.

19.3 Record Keeping Formats. Contractor may elect to maintain part of the records described in *Section 19.1* above in an electronic format. Contractor agrees that, if any Project-related information is maintained in an electronic format, such information will be made available to Owner and Owner's Lenders in a readily useable format within three (3) business days after a written request by Owner.

19.4 Certifications. Upon request, Contractor shall be required to certify that, to the best of its knowledge and belief, all data subject to audit pursuant to this Article 19 is accurate, complete and current. Such certifications shall be made by Contractor to Owner and Owner's Lenders in the case of this Contract, and by Subcontractors and Vendors to Contractor in the case of subcontracts and purchase orders.

19.5 Flow Down Provisions. Contractor shall require all Subcontractors and Vendors to comply with the provisions of this Article 19, by insertion of this "*Right to Audit*" clause (*Sections 19.1* through *19.9* inclusive) into each respective related subcontract and purchase order of all tiers relating to the Work. Owner shall have the right (but not obligation) to act as Contractor's authorized representative for the purpose of conducting audits in accordance with this Article 19 of all accounting and Project-related records in the possession of all Subcontractors and Vendors. It is specifically understood, however, that Owner has no contractual relationship with any Subcontractor or Vendor of any tier. Likewise, it shall remain the Contractor's financial and contractual responsibility to resolve all such issues with its Subcontractors or Vendors. No such audit or activity by Owner or Owner's Lenders shall release Contractor or any Subcontractor from, or waive, any of Contractor's or any Subcontractor's obligations under the Contract Documents. Notwithstanding the provisions of this Article 19, Owner's and Owner's Lenders' right to audit as to Subcontractors with subcontracts on a lump sum basis shall be limited solely to those instances there is an allegation of fraud or similar misconduct involving such Subcontractor.

19.6 Remedies. Certification of information pursuant to *Section 19.4* above, and subsequent approval by Owner of invoices, billings and Change Orders, shall not preclude a post-approval adjustment, including based upon a later Contract compliance or pricing audit. Specifically, Owner shall

have the right to reduce any payments to Contractor or any Subcontractor or Vendor by any amounts attributable to incorrect or otherwise defective cost data. Contractor's submission shall be considered defective when the cost or pricing data, as certified in accordance with provisions of *Section 19.4*, above, is not accurate, complete or current. If an audit inspection or examination, conducted in accordance with this Article 19, discloses overcharges by Contractor (or any Subcontractor or Vendor) of any nature in excess of $500,000.00 (including interest as provided in *Section 17.6.1*) hereof, Contractor shall reimburse or cause such Subcontractor or Vendor to reimburse, Owner for the total actual cost of Owner's audit associated with such overcharge, including but not limited to the actual costs of outside auditors and/or the use of Owner's internal auditor at internal billing rates.

19.7 Record Retention. Contractor shall preserve and make available to Owner and Owner's Lenders at Contractor's principal office in Las Vegas, Nevada, all such records and other data covered by this Article 19, for a minimum period of six (6) months after Final Payment is made or for such longer period as may be required by any Laws.

ARTICLE XX.
CLAIMS

20.1 Definition. A "*Claim*" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

20.2 Notice. Claims by Contractor must be made within fourteen (14) days after occurrence of the event giving rise to such Claim. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless (a) based upon different facts from those giving rise to the initial Claim, and (b) submitted in a timely manner.

20.3 Pending Resolution. Notwithstanding any other provision of this Contract or the other Contract Documents to the Contrary, during the pendency of any dispute, action or proceeding between Contractor and Owner, so long as Owner continues to pay all undisputed amounts hereunder, Contractor shall continue to perform the Work diligently and in accordance with this Contract so as to complete the Work on or before the Guaranteed Date of Substantial Completion. Notwithstanding any provision to the contrary herein or in the other Contract Documents, Contractor shall not be relieved of any of its obligations hereunder unless and to the extent of a final judgment resolving any such dispute, action or proceeding. Contractor recognizes and acknowledges that the provisions of this Section and the completion of the Work on a timely basis notwithstanding any dispute, action or proceeding are fundamental to the contractual relationship established pursuant to this Contract, shall be specifically enforceable, and that Owner would not have entered into this Contract but for Contractor's agreement set forth herein. Contractor acknowledges that it understands and has duly considered and consulted with counsel concerning the significance of this provision.

20.4 Final Settlement of Claims. No Claim involving resolution of issues pertaining to the Guaranteed Maximum Price and/or Contract Time shall be deemed final until both parties sign a final and unconditional Change Order, or a court of competent jurisdiction makes a binding determination as described in *Section 20.5* and Article 22 below. With respect to non-judicial settlements, final and unconditional Change Orders signed by both parties shall be a condition precedent to Owner's duty to make payments or adjust the Guaranteed Maximum Price or Contract Time.

20.5 Unresolved Claims. Any Claims or disputes arising out of this Contract which are not resolved by the parties after a reasonable period, may be pursued in accordance with Article 22 hereof.

Contractor shall identify in Contractor's Applications for Progress Payment and Application For Final Payment any such Claims which remain unresolved.

ARTICLE XXI.
OWNER'S LENDERS

21.1 Owner's Lenders. Contractor acknowledges and agrees that Owner has provided notice to Contractor, and Contractor shall before entering into any subcontract or purchase contract provide notice to every Subcontractor and Vendor, that Owner's funds for construction of the Project, including payment of the Guaranteed Maximum Price, shall be borrowed and or derived substantially from one or more lenders providing financing for the Project from time to time ("*Owner's Lenders*"), and Owner's ability to obtain such funds shall be subject to one or more loan documents and conditions precedent to advances thereunder. The term "Owner's Lenders" shall also mean and include any and all trustees, intercreditor agents, disbursement agents, administrative agents, consultants, architects, inspectors, construction managers, auditors and engineers appointed or retained directly or indirectly by or on behalf of any of Owner's Lenders.

21.2 Assignment and Default. Owner shall have the right to assign the Contract to any one or more Owner's Lenders. If an event of default by Owner has occurred under any loan documents relating to Owner's Lenders, Contractor agrees that Owner's Lenders may at anytime thereafter upon written notice to Contractor ("*Lender's Notification*"), require Contractor to continue to perform Work under the Contract, and in such Lender's Notification, Owner's Lenders may elect either to (a) not assume any of Owner's rights or obligations under the Contract, or (b) assume Owner's rights and obligations arising under the Contract from and after the date of Lender's Notification. Upon receipt of Lender's Notification, and notwithstanding any event of default by Owner under any such loan documents and whether Owner's Lenders elect clause (a) or (b), Contractor shall thereafter continue to properly perform the Work and its obligations under the Contract in accordance with the terms of the Contract, so long as Contractor continues to be paid, by either Owner or Owner's Lenders in accordance with the terms of this Agreement, for all Work not in dispute and properly performed in accordance with the terms of the Contract from and after the date of Lender's Notification.

21.3 Owner's Lenders Election. Notwithstanding any provision of the Contract which may give Contractor the right to terminate the Contract or suspend or discontinue performance thereunder, Contractor agrees not to terminate the Contract or suspend or discontinue performance thereunder without first providing Owner and Owner's Lenders with fourteen (14) days prior written notice, and during such fourteen (14) days Owner's Lenders may elect whether to (a) terminate the Contract and not cure any defaults of Owner and not assume any of Owner's obligations under the Contract, or (b) require Contractor to continue Contractor's performance under the Contract, but not assume any of Owner's obligations under the Contract, or (c) assume Owner's obligations arising under the Contract from and after the date of Owner's Lenders' election, and require Contractor to continue Contractor's performance under the Contract. If Owner's Lenders shall timely elect to proceed under either clause (b) or (c) herein, Contractor agrees not to terminate the Contract or suspend or discontinue its

performance thereunder, and to continue to properly perform all Work and obligations under the Contract in accordance with the terms of the Contract and accept payment and/or performance from Owner or Owner's Lenders, so long as Contractor continues to be paid in accordance with the terms of this Agreement, for all Work not in dispute and properly performed in accordance with the terms of the Contract after Owner's Lenders' election under clause (b) or (c).

21.4 Payment and Work Continuation. Notwithstanding any other provision of the Contract or otherwise, including anything in this Article 21, and unless Owner's Lenders elect to assume the Contract, Owner's Lenders shall have no obligation to reimburse or pay Contractor for (a) any Work which has been the subject of a prior advance of loan funds by Owner's Lenders to Owner and paid to Contractor, and/or (b) any Work which is the subject of a dispute by Owner's Lenders as to its proper

quality, scope or compliance with the Contract. Owner's Lenders shall have the benefit of all claims, defenses to payment and setoffs available to Owner under the Contract as to amounts that Contractor contends are due for Work under the Contract. Notwithstanding any terms of the Contract to the contrary, Contractor will diligently continue to perform the Work and its obligations under the Contract notwithstanding any dispute arising with Owner, Owner's Lenders or any other person or entity, so long as Contractor continues to be paid in accordance with the terms of this Agreement for all Work not in dispute and properly performed in accordance with the terms of the Contract and not subject to a right to withhold as provided in the Contract. Except to the extent expressly provided in *Section 21.3* hereof, nothing in this Contract, or otherwise, shall cause or impose any obligation on Owner's Lenders to fund any amounts, including any loan advance, to Contractor. Owner's Lenders may enforce the obligations of the Contract with the same force and effect as if enforced by Owner, and may (but need not) perform the obligations of Owner (unless Owner's Lenders elect to perform such obligations pursuant to this Article 21), and Contractor will accept any such performance in lieu of performance by Owner in satisfaction of Owner's obligations hereunder. Subject to the foregoing limitations on assignment and delegations, all of the terms and provisions of the Contract shall be binding upon and shall inure to the benefit of the parties to this Agreement, and their respective permitted transferees, successors, assigns and legal representatives.

21.5 Payments. Owner's Lenders shall have the right at any time and from time to time to make payment directly to Contractor and/or by joint payee check to Contractor and any Subcontractor or Vendor, for Work performed under the Contract.

21.6 Audit Rights. Owner's Lenders shall have and be entitled to all of the same audit and inspection rights, as Owner has under Article 19 of this Agreement.

21.7 Access. Owner's Lenders shall have and be entitled to all of the same rights to access and inspect the Site and Work, wherever located, as Owner has under the Contract documents, at reasonable times and upon reasonable notice and subject to reasonable safety precautions.

21.8 Material Changes. Contractor and Owner acknowledge and agree that certain Changes, including increases in the Guaranteed Maximum Price and extensions of the Contract Time, and allocation of the Owner Contingency, may be subject to the approval of Owner's Lenders and agrees that no such Changes shall become effective without such approval.

21.9 General Cooperation. Contractor agrees to cooperate fully with all such Owner's Lenders, including Contractor agrees to (a) provide written notice to Owner's Lenders of any Change in the Work, material Change in the manner or amounts paid to Contractor, extension or acceleration of Contract Time, or material Change in the Drawings or Specifications, (b) authorize Subcontractors and Vendors to communicate directly with Owner's Lenders regarding the progress of the Work, (c) provide Owner's Lenders with reasonable working space and access to telephone, copying and telecopying equipment, (d) communicate with Owner's Lenders and, on request to execute, provide and/or deliver as the case may be, such documents, certificates, consents, invoices and instruments, and other information, as Owner's Lenders may reasonably request with respect to the Work, the Project and/or payment of the cost thereof, (e) enter into such amendments to the Contract as Owner's Lenders may reasonably request so long as such amendments do not materially or substantially alter Contractor's rights, duties or obligations under the Contract Documents, (f) enter into a consent to assignment in favor of Owner's Lenders consenting to the collateral assignment of the Contract to Owner's Lenders and (g) otherwise facilitate Owner's Lenders review of the construction of the Project.

ARTICLE XXII.
DISPUTE RESOLUTION AND GOVERNING LAW

22.1 Judicial Determination. All Claims and disputes and other matters in question arising out of or relating to the Contract or the breach thereof, shall be decided by a court of competent

jurisdiction in the State or Federal Courts in the City of Las Vegas or County of Clark, Nevada. The existence of any claim, dispute or legal proceeding shall not relieve Contractor from its obligation to properly perform its Work as set forth in the Contract Documents.

22.2 Governing Law. The Contract Documents and any Judicial Determination instituted by the parties pursuant to this Contract shall be governed by the laws of the State of Nevada, without regard to Nevada's choice of law provisions.

22.3 Non-Waiver. In resolving disputes arising out of this Contract, it is expressly agreed that no action or failure to act by Owner, Contractor or any agent, representative, employee or officer of either of them (including Owner's Project Representative and Contractor's Site manager) shall constitute a waiver of any right or duty afforded to either party in the Contract Documents. It is likewise expressly agreed that any action or failure to act by either party shall not constitute approval of or acquiescence in any breach of this Contract, except as are specifically agreed to in writing by the parties' corporate officers.

22.4 Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of the Contract Documents, or any portion thereof, shall not affect the remaining portions and the Contract Documents shall be construed as if such invalid covenant, agreement, condition or provision had not been included herein.

ARTICLE XXIII.
PROPRIETARY INFORMATION AND USE OF OWNER'S NAME

23.1 Proprietary Information. Owner considers all information (regardless of form) pertaining to the Project to be confidential and proprietary, including information which is prepared or developed by or through Contractor, Owner or Owner's other contractors, unless otherwise stated to Contractor in writing. Contractor shall not, and shall not allow, suffer or permit any Subcontractors or Vendors to, disclose any such information without Owner's prior written consent. Contractor shall obtain similar written agreements from each and every Subcontractor and Vendor as Owner may reasonably request.

23.2 Advertising and Use of Owner's Name. Contractor shall not issue any news releases or any other advertising pertaining to the Work or the Project, including advertising its participation in the Project, without obtaining Owner's prior written approval. Contractor hereby agrees not to use the name of Owner's premises, or any variation thereof, or any logos used by Owner, in connection with any of Contractor's business promotion activities or operations without Owner's prior written approval. Contractor shall require its Subcontractors and Vendors to comply with the requirements imposed upon Contractor by this Article 23, including obtaining Owner's prior written consent to the form and content of any promotional or advertising publications or materials which depict or refer to their respective roles in providing Work for the Project.

23.3 Use of Drawings. All plans, Drawings, Specifications and other documents furnished to Contractor, including, but not limited to, the Contract Documents, are the property of Owner and are for use solely with respect to the Work and are not to be used by Contractor or any Subcontractor on any other projects or for any other purpose.

ARTICLE XXIV.
MISCELLANEOUS PROVISIONS

24.1 Assignment. Because of the special experience Contractor has represented it has and unique nature of the services to be rendered by Contractor under the Contract Documents, Contractor shall not assign its interest in the Contract or delegate its obligations thereunder without the prior written consent of Owner. Any purported assignment by Contractor without such consent shall be null and void. Owner may at any time and from time to time, upon notice to but without consent of

Contractor, assign the Contract or delegate its obligations to an affiliate or subsidiary of Owner, or to an entity which acquires all or substantially all of Owner's interest in the Project or all or substantially all of the assets or member interests of Owner, and/or change its name from time to time. So long as Owner's assignee assumes in writing Owner's obligations and liabilities under the Contract, and Owner represents in writing at the time of assignment that the assignee has at least the same financial status as Owner does at the time of the assignment, Owner shall thereafter be released from its obligations and liabilities under the Contract.

24.2 Subordination. Notwithstanding any other provision of the Contract Documents, and notwithstanding the provisions of *Section 108.225* (and any related Section) of the Nevada Revised Statutes, Contractor agrees for itself and for every Subcontractor and Vendor and every other person performing any services or providing any materials relating to the Work, that any and all liens and lien rights and benefits (including enforcement rights) Contractor and or any of the other foregoing parties may or do have under applicable law (including, without limitation, Nevada Revised Statutes *Sections 108.221* to *108.246*), shall at all times be subordinate and junior to any and all liens, security interests, mortgages, deeds of trust and other encumbrances of any kind (on the Site and otherwise) in favor of any of Owner's Lenders ("*Lender Liens*"), notwithstanding that Work may be or is commenced or done on, and materials may be or are furnished to, the Site prior to any Lender Liens being imposed upon or recorded against the Site or any of Owner's assets and before expiration of the time fixed under applicable law for filing of mechanics and materialmen's liens. Contractor shall, and Contractor shall cause every Subcontractor and Vendor at every tier, and any other person performing services or providing materials relating to the Work to, sign and deliver to Owner and Owner's Lenders from time to time upon request by Owner or any of Owner's Lenders: (a) written and recordable acknowledgments and restatements of the provisions of this *Section 24.2* and the subordination described herein, and (b) such affidavits, certificates, releases, indemnities, waivers and instruments (and in form and content) as Owner's or Owner's Lender's title insurer shall require to allow such insurer to issue such title endorsements as Owner or Owner's Lenders require (including insuring first priority of Lender Liens). Contractor's or any Subcontractor's or Vendor's, failure, or the failure of any party for whom the foregoing are responsible or liable at law or under the Contract Documents, to provide the items required in clauses (a) and (b) hereinabove upon request, or Owner's or Owner's Lender's inability to obtain at any time endorsements to Owner's Lender's title policies (or issuance of initial title policies) insuring first priority of Lender Liens, including without limitation senior to any mechanics' or materialmen's lien or lien rights, shall constitute a material default and breach of the Contract Documents and failure of a condition to any payment by Owner owed to Contractor under the Contract or otherwise.

24.3 No Third-Party Beneficiaries. Except as may be expressly provided otherwise in this Contract, this Contract and the obligations of the parties are intended for the sole benefit of the parties and shall not create any rights in any other person or entity whatsoever except Owner and the Contractor.

24.4 Enforceability. In the event that any provision in the Contract Documents or any portion thereof is determined to be invalid, unenforceable or void, the remainder of the Contract Documents shall be fully binding with the same force and effect as though the invalid, unenforceable or void provision had been omitted.

24.5 Headings. Section and other headings are not to be considered part of this Agreement, have been included solely for the convenience of the parties, and are not intended to be full or accurate descriptions of the contents.

24.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24.7 Legal Fees. The losing party shall promptly pay to the prevailing party as determined by a court of competent jurisdiction all costs, disbursements and reasonable attorneys' fees incurred in connection with any legal action, including mediation, in whole or in part, based on a breach of the Contract or other dispute arising out of or in connection with the Contract, including any Claim, or to enforce its rights under the Contract.

24.8 Waiver. No modifications of the Contract shall be binding unless executed in writing by the parties to this Agreement. No waiver of any of the provisions of the Contract shall be binding unless executed in writing by the waiving party, and any such waiver shall not constitute a waiver of any other provision of the Contract, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

24.9 Intent of the Parties. Contractor and Owner acknowledge that applicable Nevada Revised Statutes in certain circumstances, among others (i) regulate the process by which an owner can withhold payment(s) to a contractor or subcontractor, including the amount(s) that can be withheld, and (ii) regulate when and how an owner or a contractor can terminate a construction contract and the available remedies upon such termination. It is the express intent of the parties that Contractor completely and unconditionally waive to the full extent allowable each and all of those Nevada Revised Statutes that are in conflict with the provisions of this Agreement, including those with regard to the matters described in the foregoing clauses (i) and (ii). Provided, however, Owner and Contractor acknowledge that some applicable provisions of the Nevada Revised Statutes cannot be waived. Accordingly, to the extent the foregoing waiver by Contractor is expressly prohibited by applicable Nevada Revised Statutes as to certain provisions thereof, Contractor's foregoing waiver shall not be deemed to extend to those non-waivable provisions of the Nevada Revised Statutes. In such circumstances, if any, where one or more provisions of this Agreement are in conflict with provisions of the Nevada Revised Statutes that cannot be waived, the offending portions of the provision in this Agreement shall be interpreted so as to be consistent with the non-waivable sections of the Nevada Revised Statutes. To the extent such interpretation renders any portions of this Agreement ineffective, it is the intent of the parties that only such offending portion shall be so deemed, and the remainder of the provision in this Agreement shall be of full force and effect.

24.10 Survival. Subject to the provisions of *Section 5.8.7* hereof, the provisions of this Agreement, including Contractor's covenants, representations, guaranties, releases, warranties and indemnities and the benefit thereof, shall survive as valid and enforceable obligations notwithstanding any termination, cancellation or expiration of the Contract, acceptance of the Work, Final Completion of the Work or Project, or any combination of them. Establishment of the time periods as described in Article 10 hereof relates only to the specific obligations of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents are sought to be enforced, nor to the time within which proceedings are commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

24.11 Independent Contractor. While Contractor is required to perform the Work in strict accordance with the Contract Documents, Contractor shall at all times be an independent contractor and responsible for and have control over all construction means, methods, techniques, sequences and procedures for constructing, coordinating and scheduling all portions of the Work to achieve the requirements of the Contract Documents. Nothing in the Contract Documents shall be deemed to imply or represent or be construed to (a) make Contractor, its supervisors, employees, its Subcontractors or Vendors of any tier the agents, representatives or employees of Owner, or (b) create any partnership, joint venture, or other association or relationship between Owner and Contractor or any Subcontractor, nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against Owner or Contractor which does not otherwise exist without regard to the Contract Documents. Any approval, review, inspection, supervision direction or instruction by Owner or any party on behalf of Owner, including any of Owner's Lenders, in respect to

the Work or services of Contractor shall relate to the results Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status or obligation to perform the Work in accordance with the Contract Documents.

24.12 Privileged Business. Contractor acknowledges that Wynn Resorts, LLC, Valvino Lamore LLC and The Wynn Group, and their subsidiaries and other affiliated companies, are now and/or will be involved in the ownership and control of Owner, and the foregoing entities own and operate businesses that are subject to and exist because of privileged licenses issued by governmental authorities. If requested, Contractor shall, and Contractor shall cause all Subcontractors and Vendors to, timely provide Owner with such documentation and information to substantiate the fact that it has recent experience working in the resort casino industry and if required shall timely obtain any qualification or clearance required by any regulatory authority having jurisdiction over Owner or any of the foregoing entities or subsidiary or affiliate thereof. If Contractor or any Subcontractor or Vendor fails to satisfy such requirements or if Owner or any of the foregoing entities or any other affiliated company thereof is directed to cease doing business with Contractor or any Subcontractor or Vendor then such event shall be deemed a material breach of the Contract by Contractor and Owner shall have the right to terminate the Contract and/or any subcontract or purchase order, among all other remedies available to Owner.

24.13 Entire Agreement. The Contract Documents, as defined in *Section 1.5* above, set forth the full and complete understanding of the parties as of the Effective Date of this Contract and supersede any and all agreements, understandings and representations made or dated prior thereto. Unless specifically enumerated or incorporated herein, the Contract Documents do not include any other documents, any qualifications to the Guaranteed Maximum Price or Contract Time contained in Contractor's bid or any correspondence or other proposals by either party dated prior to the Effective Date. No modifications of the Contract shall be binding unless executed in writing by the parties to this Agreement. Each and all of the *Exhibits A* through and including *R* referenced in this Agreement are hereby expressly incorporated herein by this reference.

ARTICLE XXV.
NOTICES

25.1 Notice Procedures. All notices, demands, requests, instructions and other communications relating to the Contract Documents (collectively, "*Notices*"), shall be in writing and effective upon actual receipt by the parties at the addresses listed below, whether sent by facsimile transmission (so long as received during normal business hours), regular mail or certified mail. Any notices sent by certified mail shall be effective not later than the date of delivery designated by the U.S. Postal Service.

25.2 Notices To Owner. All Notices to Owner (except requests for information, Shop Drawing submittals, instructions and similar notices) shall be sufficient when sent in accordance with *Section 25.1* above and addressed as follows:

Wynn Las Vegas LLC
Attn: Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4596
Telephone No. (702) 733-4556

Kenn Wynn, President
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4738
Telephone No. (702) 733-4812

and

Todd Nisbet, Executive Vice President—Project Director
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4715
Telephone No. (702) 733-4497

Contractor shall concurrently with delivery to Owner provide to Owner's Lenders copies of all Notices (except requests for information, Shop Drawing submittals, instructions and similar notices) at an address or addresses to be provided, with copies to:

Pamela B. Kelly
Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, California 90071
Facsimile No.: (213) 891-8763
Telephone No.: (213) 891-8726

25.3 Notices To Contractor. All Notices to Contractor shall be sufficient when sent as set forth in *Section 25.1* above and addressed as follows:

Perry A. Eiman, President
Marnell Corrao Associates, Inc.
4495 South Polaris Avenue
Las Vegas, Nevada 89103
Facsimile No. (702) 739-8521
Telephone No. (702) 703-9413

and

Christopher L. Kaempfer, Esq.
Kummer Kaempfer Bonner & Renshaw
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, Nevada 89109
Facsimile No: (702) 796-7181
Telephone No.: (702) 792-7000

25.4 Change of Address. Either party may, from time to time, designate in accordance with this Article 25 a different individual and/or address to which Notices are to be delivered.

IN WITNESS WHEREOF, The parties hereby execute this Agreement by signature of their respective duly authorized representatives as of the Effective Date hereof.

OWNER:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company,

By: Wynn Resorts, LLC,
a Nevada limited liability company,
its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Managing Member

CONTRACTOR:

MARNELL CORRAO ASSOCIATES, INC.,
a Nevada corporation

By: /s/ Anthony A. Marnell, II

Its: Chairman

For good and valuable consideration received, the undersigned Guarantor hereby acknowledges and agrees to comply with the provisions of *Section 4.6.2* contained in this Agreement as they relate to Guarantor.

GUARANTOR:

Austi, Inc.
a Nevada corporation

By: /s/ Anthony A. Marnell, II

Its: Chairman

EXHIBIT F—Attachment 3

EXCLUSIONS

The Following Items are specifically excluded from Marnell Corrao Associates Guaranteed Maximium Price (GMP)

1. Architectural / Engineering Design Fees
2. Interior Design Fees
3. Major Building Permit / Planscheck Fees
4. Transportation / Development Taxes
5. Health Department Fees / Plan Review
6. Testing and Inspection Fees
7. Third Party Q.A.A. Fees
8. Utility Connection and/or Service Fees (Sewer, Water, Power, Gas, Telephone, etc.)
9. Nevada Power Company Line Extension / Equipment / Service Fees for New Substation
10. Utility Costs
11. Site Security Service Expenses
12. Offsite Improvements (excepting those known Offsite Improvements specifically identified within the GMP)
13. Owner Controlled Insurance Program (OCIP) costs including Builder's Risk and Worker's Compensation
14. Loss of Use Insurance (to be provided by Owner, if desired)
15. Existing Site Building Demolition
16. Environmental Surveys, Abatement if required
17. Landscaping and Irrigation (Exterior and Interior)
18. Thematic Pottery / Sculptural Elements (Exterior and Interior)
19. Golf Course Construction (By Others)
20. Parking Garage Construction (By Others)
21. Leased Retail Areas Build-out including Interior Finishes (Core and Shell construction of these areas is included in the GMP)
22. All Gaming Equipment, Devices and Related Supplies, i.e.:

    — Gaming Tables
    — Gaming Seating
    — Pit Stands and related equipment
    — Change Stands and related equipment
    — Slot Machines
    — Slot Machine Stands
    — Slot Tracking Systems
    — Slot Signage
    — Keno Systems including wiring thereof
    — Race & Sports Book Betting System and Display Boards including wiring thereof
    — Bingo Systems including wiring thereof
    — Soft or Hard count Equipment/Systems
    — Cage Equipment
    — Money Carts, Coin Handling Devises
    — Safe Deposit Boxes, Cage Vaults, etc.

23. Automated Room Entry Lock Systems including all equipment and wiring therefor
24. Guestroom Equipment (Safes, Refrigerators, Ice Machines, Mini-Bars, Make-up Mirrors, Blow Dryers, Clock Radios, etc.)
25. Guestroom Plumbing Fixtures Supply (Installation of same is included in the GMP)
26. Ice Machines in Room Corridors

27. Guestroom Televisions
28. Guestroom Audio / Video Systems including all equipment and wiring therefor (VCR's, stereos, CD players, etc.)

29. Programmable Controls (AMX) for Guestroom media, HVAC, and Lighting
30. Public Area Televisions, Video Walls
31. Master Antenna Systems, Cable Systems, In-room Movie Systems including all equipment and wiring therefor
32. Telephones, Telephone Systems including all equipment and wiring therefor
33. All Computer Systems including all equipment and wiring therefor
34. Stand Alone UPS for Computer Systems
35. FM 2000 Systems for Miscellaneaous Computer Rooms (Main Data Center Included)
36. Cabling and Data Backbone (Low Voltage / Tele-Data) including Termination and Testing
37. Hand Held Radio Systems
38. Accoustiguide System
39. Reader Boards including Data Cable therefor
40. Maid Room Status Systems
41. Point of Sale Systems including equipment and wiring therefor
42. Employee Time clock Systems
43. Uniform Issue Delivery/Storage Systems
44. Package Conveyer (Mail Room)
45. Laundry and/or Dry Cleaning Equipment including installation thereof
46. Seamstress Equipment
47. Pneumatic Tube Systems
48. Show Theatrical Equipment / Systems (Audio, Projection/Video, Rigging, Lighting, Controls)
49. Show Special Effects (Plumbing / Electrical Infrastructure is included as identified in the GMP Breakdown)
50. Show Specialty Lifts / Stage Lifts (Stage Lift Electrical is included as identified in the GMP Breakdown)
51. Show Sets
52. Show Design/Production Costs
53. Show Support Equipment and/or Tools
54. Showroom and/or Special Event Seating
55. Theatrical Lighting Fixtures @ Public Areas
56. Executive Office A/V System including Teleconferencing
57. Portable A/V Equipment for Convention/Meeting Rooms, Training Rooms
58. Gym Equipment
59. Salon Equipment
60. Portable Heaters @ Patios
61. Aroma Systems
62. Beverage/Liquor Dispensing Systems including equipment and tubing therefor
63. All Back of House items associated with Cooking and Eating (i.e. Flatware, China, Glasses, Cups, Silverware, Utensils, Pots, Pans, etc.)
64. Bus Carts, Room Service Carts, Tables, Hardware, etc.
65. Warehouse Racking/Storage Systems
66. Warehouse / Loading Dock Handling Equipment (Forklifts, Dollies, Carts, Scales, etc)
67. Housekeeping Equipment and Supplies
68. Guestroom Supplies
69. Towels & Linens
70. All Paper and Sundry Items
71. Employee and/or Storage Lockers
72. Engineering Equipment, Tools, Supplies

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73. Paint Spray Booth Equipment
74. Dust Collection Systems
75. Photo / Dark Room Equipment
76. All Office Equipment
77. All Office Furnishings (i.e. Desks, Chairs, Conference Tables, File Cabinets, etc.)
78. Vending Machines
79. Trash and Ash Receptacles
80. Trash Compactors
81. Amusement Games/Machines
82. FF&E Buyout Items @ Guestrooms/Guestroom Corridors

    - Room Furnishings (i.e. Beds, Box springs, Mattresses, Headboards, Dressers, Nightstands, Tables, Chairs, Sofas, etc.)
    - Vanity Cabinets Buyout (Installation of same is included in the GMP)
    - Draperies or other Window coverings
    - Decorative Light Fixtures including light bulbs (Chandeliers / Wallsconce -installation is included in the GMP)
    - Carpet (Installation is included in the GMP for the Highrise)
    - Wallcovering (Installation is included in the GMP)
    - Artwork, Artifacts, Murals
    - Interior Plantings
    - Room / Corridor / Lobby Signage

83.

- Loose Furnishings (i.e. Tables, Chairs, Stools, etc.)
- Draperies or other Window coverings
- Decorative Light Fixtures including light bulbs (Chandeliers / Wallsconce installlation is included in the GMP)
- Carpet
- Wallcovering (Installation is included in the GMP)
- Artwork, Artifacts
- Interior Plantings

84. FF&E Installation
85. Golf Course Clubhouse Lockers / Locker Benches
86. Marble/Granite/Stone Buyout and Delivery (Installation of Owner provided material is included excepting material to be set on Furniture)
87. Sealing of Marble/Granite/Stone
88. Custom Decorative Tile (Installation of Owner provided materials is included)
89. Upholstered Fabric Panels
90. Artisan provided Special Finishes applied to Walls/Ceilings (i.e. Hand-painted applications, Murals)
91. Interior Signage
92. Exterior Signage
93. Models / Mock-ups
94. Attic Stock and/or Spare Equipment/Materials
95. Departmental FF&E, Inventory, and Supplies

AGREEMENT FOR GUARANTEED MAXIMUM PRICE CONSTRUCTION SERVICES
BETWEEN
WYNN LAS VEGAS, LLC
AND
MARNELL CORRAO ASSOCIATES, INC.
FOR LE RÊVE

EXHIBIT G

GUARANTEED MAXIMUM PRICE PREMISES AND ASSUMPTIONS

General Understanding

1. The Guaranteed Maximum Price (GMP) is based upon the square footage areas for each building function as defined in the March 8, 2002 Master Plan Drawings, and further described in columns A and B (with applicable comments) as set forth in Attachment 2 of Exhibit F attached to the Agreement for Guaranteed Maximum Price Services between Owner and Contractor ("Agreement") and to which this Exhibit G is attached. The area square footages as set forth in column B in Attachment 2 of Exhibit F are a fundamental premise, and significant variations in the individual area square footages and/or in the total square footage area will directly correlate to the Cost of the Work and may, after review and evaluation, require appropriate adjustments to the GMP.

2. Owner and Contractor acknowledge that construction of the Project will commence without final Drawings and Specifications. More specifically while Drawings and Specifications are complete for certain portions of the Work, the design process will continue for other portions during construction. Owner accepts Contractor's role as an active participant in the design process, providing constructability and cost estimating services in a timely manner and method which supports the Project Schedule, all in accordance with and pursuant to the Agreement. Owner, Architect and their respective consultants agree to work with Contractor in the completion of the design documents and to meet with Contractor on a regular basis to review cost estimates, and recommended alternate means and methods required to meet the intended design within the budget parameters provided in the GMP.

3. The overall design of the Project will provide for a facility of comparable building type, finishes and amenities of a quality level to compete with similar high-end casino resorts on the Las Vegas Strip.

4. Owner acknowledges that preparation of the Drawings and Specifications in a timely manner pursuant to the Project Schedule, attached as Exhibit B to the Agreement, is required to provide Contractor with adequate time to provide the required pre-construction services pursuant to the Agreement.

5. The Contractor's Scope of Work specifically excludes those items as identified in the GMP Exclusion List in Attachment 3 of Exhibit F attached to the Agreement.

6. The GMP includes Allowance items as defined in Attachment 4 of Exhibit F attached to the Agreement.

Project Area GMP Estimate Premises and Assumptions

1. Highrise design documents have been completed and competitive bids received to validate the Highrise estimate values contained within the GMP.

2. Lowrise Area 1 design documents which include the Central Plant facilities and equipment have been completed and competitive bids received to validate the Lowrise Area 1 estimate values contained within the GMP.

3. The Lowrise Building Systems—Mechanical, Plumbing, Electrical, and Life Safety shall be designed to be comparable to systems utilized in similar high-end casino resort facilities in the Las Vegas area. The detailed design drawings and specifications issued for Lowrise Area 1 shall be the basis of the basic building systems, to be designed in Lowrise Areas 2, 3, 4 and 5. The Mechanical, Plumbing, Electrical and Life Safety Systems are further outlined as follows:

- Mechanical Systems:

  The Lowrise Mechanical Systems consists of the heating and cooling central plant that provides chilled water, hot water for both space heating and the production of domestic hot water and high-pressure steam for use in the kitchens within Areas 1 and 2. Pre-cooling water and tempered water is also produced at the Central Plant which is distributed to pre-cool/pre-heat coils to pre-treat outside air using an indirect evaporative cooling process. The Plant includes six (6) 1800 ton centrifugal chillers with matching 2-cell cooling towers, five (5) 500 BoHP low pressure hot water boilers producing 220°F hot water, two (2) 70 BoHP high pressure steam boilers with deaerator and boiler exhaust economizer and plate and frame heat exchangers for water side economizer and production of pre-cooling/pre-heating water.

  A combination of VAV and constant volume air handling units are used throughout the Lowrise to provide air conditioning. The air-handling units are located within fan rooms and, in most cases, include exhaust fans for use with airside economizer and damper sections. Where applicable, the exhaust fans are also used for smoke control, having an appropriate fire alarm interface. Fan rooms which house the air handling units serving the casino, the spa and tower ventilation units incorporate a bank of pre-cool/pre-heat coils and filters on the outside air louvers creating a clean, treated outside air plenum. Entry of these spaces is via an "air lock" or vestibule.

  Grease exhaust systems will incorporate both conventional exhaust fans/systems as well as pollution control units where appropriate to minimize the introduction of smoke and odors into adjacent air handling systems.

  The entire facility will be controlled and monitored by a direct digital control system (EMCS). A single front end system including PC's, printers, color monitors and keyboard will enable the engineering staff to monitor, control and program the operation of each mechanical system. The EMCS features will be overridden only by the fire alarm system, where appropriate for smoke control functions.

  The subterranean valet parking garage levels will be continuously exhausted, however, the fans will be controlled by carbon monoxide sensors that will minimize the fan run time. These fans will also be used for smoke control via fire alarm override. Make-up air fans will also be used as a part of this system in order to maintain maximum airflow velocities across ramp openings at 200 FPM when in the smoke exhaust mode.

  Dedicated, water-cooled A.C. units will be used to cool equipment rooms that exhibit high heat gain. Pumps will be used to allow the chilled water return to be used as the condensing medium. Where required, these systems will be served by emergency or standby power with the chilled water piping system acting as a storage tank.

- Plumbing Systems:

  The Plumbing Systems consist of soil (conventional and grease), waste, vent, storm drain, hot and cold water and hot water return. Grease waste systems below grade (main lines) will be insulated using a factory fabricated high-density foam insulation with black polyethylene outer jacket and PVC carrier pipe. A notch-out is used for the electric heat tracing and allows for easy servicing of the heat trace or replacement, without having to expose the buried pipe. Domestic hot water is produced using water-to-water heat exchangers with 220°F boiler water from the Central Plant. Soft 140° hot water is produced at the Central Plant and distributed throughout the Lowrise areas. Tempering stations are used to reduce the water temperature as required for public use. The 140° hot water is used directly for food service applications. Tempered water downstream of tempering stations is heat traced in order to maintain the water temperature. The 140°F system is continuously recirculated.

  Domestic hot water will be pre-heated via a stack heat reclaim system employed at one of the high-pressure steam boilers.

- Electrical Systems:

  Power and Distribution:

  The property is served via three (3) Nevada Power Company (NPCo) utility service feeders each rated at approximately 10 MVA for a total of 30 MVA of normal power capacity. In addition, the standby-emergency power system provides 10 MW/13 MVA of generator capacity for the life safety/legally required and optional standby systems.

  The 12.47 KV utility feeders terminate at three (3) meter mains located in the Nevada Power Company yard. From the meter mains, the three (3) major property feeders route to the building that houses the three (3) main medium voltage draw out circuit breaker distribution boards which in turn feed the normal source to the paralleling switchgear line up as well as the main medium voltage subdistribution switchgear.

  Distribution for the property is at 12.47 KV and is routed via a system of underground conduits and manholes. Feeders are routed to 12.47 KV subdistribution switchgear that handles a specific region of the facility. The majority of the subdistribution switchgear is dual sourced with feeders that have physically separate routes. One feeder serves as the primary with the second serving as manual back up. The sources are mechanically interlocked via Kirk Keys which forces an open transition (break before make) manual transfer to the alternate feed and also avoids inadvertent paralleling of utility feeders. A portion of the distribution includes redundancy for the normal source whereas the majority includes one utility sourced feeder and a second from the generator system.

  The subdistribution switchgear is concentrated in three locations in the Lowrise including the Central Plant, the south end of the casino and the north end of the casino. Retail, the lake feature, and the northeast end of the property also have 12.47 KV switchgear dedicated to the distribution for their associated regions of the facility.

The 12.47 KV switchgear at the various subdistribution areas feed dry type unit substations that step the voltage down and serve the main 480 volt and 208 volt distribution switchboards. The 480 volt and 208 volt switchboards feed all of the HVAC, lighting, elevators, etc. required for the property.

The distribution for the Central Plant includes three (3) 12.47KV subdistribution boards each with a separate feeder. Each NPCo feeder has one-third of the total plant load such that loss of any one utility source results in a plant capacity reduction of 33 percent. The three (3) Central Plant 12.47 KV switchboards have the capability of tying to either of the remaining two normal power feeders via Kirk Key interlocked manual transfer. In addition, manual transfer to the generator source is also possible via Kirk Key interlocked manual transfer.

Emergency and optional standby power are provided via diesel fuel engine generators. The generators tie into a common paralleling bus that enables aggregate capacity. The paralleling switchgear has a source feeder from each of the three (3) utility services and is configured in a split bus arrangement (three distinct bus sections). The bus arrangement makes tie to generators or a remaining utility source possible. The system is also configured to be selectable; in effect, if utility source A is lost, the sequence can be set up to transfer only the A bus to generators which maximizes available capacity for the lost feed.

System prioritization occurs at the paralleling switchgear with left safety/legally required as the highest priority and optional standby as the lower priorities. Once beyond the paralleling switchgear emergency/legally required and optional standby are completely independent segregated systems.

The casino distribution and other areas of the facility that are switch mode power supply intensive are being provided with harmonic mitigating transformers which both save energy and maintain power quality with respect to total harmonic distortion within the parameters of IEEE 519.

Fire Alarm Systems:

The property will be served via a fully addressable-networked fire alarm system. The central control station (fire command center) will house the head end equipment and graphic annunciators per highrise requirements. Network nodes (data gathering panels) are distributed throughout the property and serve a specific region of the facility. The system provides detection, annunciation, occupant notification and monitoring in accordance with highrise requirements and the parameters outlined in the Highrise Fire Protection Report.

4. Structural Systems: The Lowrise structural systems are figured to be comparable to similar Type I resort facilities designed under the 1997 Uniform Building Code in the Las Vegas area. The basic structural systems have been established in concept and include cast-in-place concrete structure for the levels below the casino floor level including the parking levels and structural steel framing above the casino floor level. The current market pricing received for Area 1 of the Lowrise has served to further validate the estimate values contained within the GMP.

5. Wall Systems and Building Envelope: The Lowrise exterior wall systems and interior partitions have been budgeted at a level that is consistent with the required quality levels and finish systems that have been specified and provided as a part of the Area 1 Construction Documents. The current market pricing received for Area 1 of the Lowrise has served to further validate the estimates contained within the GMP.

6. The detailed design drawings and specifications issued for Lowrise Area 1 set the standards for Back-of-House area construction types and quality level which are anticipated to continue in Areas 2, 3, 4 and 5 for the Base Building Construction and Interior Finishes.

7. The Master Plan Drawings dated March 8, 2002 define the finish floor and roof elevations of the various Lowrise building areas of the Project. They also contain preliminary structural column and grid locations to be used as a basis for the development of the final design documents.

8. The Le Reve Project Lowrise General Criteria issued through May 30, 2002 have been reviewed and evaluated with regards to establishing the base building construction requirements. This document outlines the maximum ceiling heights, HVAC diffuser types/finishes, fire sprinkler type and finish and general lighting criteria for the Lowrise building areas, which shall be followed in the completion of the design documents.

9. The Lowrise Interior Design Criteria issued through May 30, 2002 have been reviewed and evaluated with regards to establishing the base building construction requirements. This document outlines the proposed interior design concepts for various public areas throughout the project. The base building values included within the GMP support the basic infrastructure and build out requirements as they relate to these various public areas.

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10. Interior Allocations within the Contractor's GMP as set forth on Exhibit F attached to the Agreement, were established from historical cost information and Contractor's experience constructing similar high-end casino resorts on the Las Vegas Strip. Any re-allocations of the Interior Allocation values shall be made in accordance with *Section 3.1.8.6* of the Agreement.

11. Contractor provided Equipment and Miscellaneous Cost values within the GMP, as set forth in Column F in Attachment 2 of Exhibit F, are based upon the following:

- Elevator and Escalator cost values were established from Request for Proposal and competitive bids received from subcontractors. Based on the bids received, the aggregate value within the GMP for elevators and escalators has been validated.
- Food Service and Bar Equipment estimate values for all areas defined in Columns A and B in Attachment 2 of Exhibit F, attached to the Agreement, were established with considerable and detailed consultant and subcontractor input. Additionally, the Food Service and Bar Equipment within Area 1 has been competitively bid and validated to be within the values established in the GMP.
- Other Equipment items within the Lowrise Area 1 that have been competitively bid and validated to be within the values for same within the GMP include: Operable Partitions, Convention Audio-Visual and Rigging, Loading Dock Equipment and Central Plant Equipment/Distribution.
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Other items in this category were established from unit cost estimates and/or reliable historical cost data and include: vaults; skylights (other than those skylights specifically called out as "Allowances" in Exhibit F attached to the Agreement), gallery security system, stage lifts, baggage conveyor, warehouse paging system, water features / reflecting pools and misting systems as identified in Exhibit F attached to the Agreement.

12. With regards to the leased retail outlets, the Contractor's Scope of Work is limited to the core and shell only of these areas. Tenant area build-out, inclusive of interior finishes is the responsibility of others.

13. The Golf Lanais are to be constructed in a three-story, Type I, cast-in-place concrete structure with interior build-out and interior finishes comparable to the Highrise Salon Suites. The on-grade level Lanais include private pools and patios. The above-grade Lanais include private balconies overlooking the golf course. Each Lanai will have Owner provided programmable controls (AMX) for all media, HVAC and lighting.

14. The Villas are to be constructed in a Type I structural steel-framed structure with interior build-out and interior finish levels comparable to luxury suites at other high-end casino resorts in Las Vegas. These suites include private garden/terrace areas with pools and spas. The pools and spas will have stainless steel shells supported off of a structural slab on metal deck. The landscape areas will be contained within planter areas of varying depths, built up from the structural slab on metal deck. The structural slab on metal deck will be waterproofed and contain drains to handle nuisance water. Each Villa will have Owner-provided programmable controls (AMX) for all media, HVAC and lighting.

15. AA Marnell II, Chtd., (AAM) as the Architect of Record has developed progress drawings dated May 13, 2002 for the Aqua Theater. The construction drawings for the Aqua Theater shall be in substantial conformance with the progress drawings dated May 13, 2002.

16. The Exterior Features scope of Work and associated estimate values within the GMP were established using the following criteria:

- The Lake Basin construction estimate is based upon the area and elevations shown in the March 8, 2002 Master Plan Drawings. The construction of the lake, including required water filtration equipment and piping, will be similar to the lake basin constructed at similar resort

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casino properties on the Las Vegas Strip. The lake basin construction includes a structural concrete slab over a sand cushion underlayed with a membrane lake liner.

- The Mountain Feature scope of work is carried as an "Allowance" as identified in Exhibit F attached to the Agreement.
- All Las Vegas Boulevard walks and Lakefront Embellishment estimates are based upon quantity surveys and unit pricing.
- The Main and South Porte Cochere areas including all associated improvements are based on levels of design and construction commensurate with a high-end luxury resort on the Las Vegas Strip.
- The Highrise exterior building lighting is estimated to provide for general uplighting of the building from various lowrise roof areas. Additional accent lighting is included for the decorative cornice at the top of the Highrise.
- The Lowrise exterior building lighting is estimated to provide for comparable decorative and accent lighting to that provided at similar resort/casino properties on the Las Vegas Strip.
- The Main Pool and VIP Pool areas have been budgeted utilizing historical cost data and consultant cost input.
- The balance of the Exterior Features consisting primarily of public area patios and associated improvements have been estimated using quantity surveys and current unit pricing.

17. Exterior Facades estimates have been established with specialty subcontractor input utilizing preliminary Architectural drawings and façade renderings prepared by Butler Ashworth Architects and Jerde Design Group, respectively.

18. The Site Improvements scope of Work and associated estimate values within the GMP have been established from the March 8, 2002 Master Plan Drawings as follows:

- The Valet and Taxi tunnels are estimated in accordance with the areas defined by Columns A and B in Attachment 2 of Exhibit F attached to the Agreement.
- The Main Entry Drives and Site Roadways are estimated in accordance with the areas defined by Columns A and B in Attachment 2 of Exhibit F attached to the Agreement.
- The Service Yards and Staging areas are estimated in accordance with the areas defined by Columns A and B in Attachment 2 of Exhibit F attached to the Agreement.
- The Mass Excavation and Site Preparation value in the GMP is based upon Request for Proposals and competitive Subcontractor bid results.
- The Wet Utility estimates included in the GMP are based upon Request for Proposal and competitive Subcontractor bid results.
- The Dry Utility estimates have been established with subcontractor input from current progress design documents.

19. Offsite Improvements contained within the Contractor's scope of Work are limited to the widening of Las Vegas Boulevard and temporary traffic signal improvements at the Sands and Koval intersection to facilitate the construction entrance. The estimate for the widening of Las Vegas Boulevard is based upon subcontractor bids procured from Offsite Improvement drawings prepared by Carter Burgess issued through April 17, 2002.

20. Other Scope of Work Items

- OSHA Fall Protection Requirements estimate is based on historical cost data extrapolated from a project of similar size and scope.

- Exterior Skylight Maintenance / Window Washing System estimate is based on historical cost data extrapolated from a project of similar size and scope.
- Security / Surveillance System estimate is based on historical cost data and the consultants' estimate for this Work.
- Music and Page System estimate is based on historical cost data extrapolated from a project of similar size and scope.

QuickLinks

AGREEMENT FOR GUARANTEED MAXIMUM PRICE CONSTRUCTION SERVICES BETWEEN WYNN LAS VEGAS, LLC ("Owner") AND MARNELL CORRAO ASSOCIATES, INC. ("Contractor") FOR LE RÊVE
AGREEMENT
EXHIBIT F—Attachment 3 EXCLUSIONS

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.12

CONTINUING GUARANTY

This Continuing Guaranty (hereinafter called the "Guaranty") is made this 4th day of June, 2002 by AUSTI, INC., a Nevada corporation (hereinafter called "Guarantor") in favor of WYNN LAS VEGAS, LLC, a Nevada limited liability company (hereinafter called "Owner"), with regard to the following:

W I T N E S S E T H:

WHEREAS, Owner and MARNELL CORRAO ASSOCIATES, INC. a Nevada corporation (hereinafter called "Contractor"), have entered into that certain Agreement for Guaranteed Maximum Price Construction Services dated June 4, 2002 for the construction of Project (as such may be amended, modified or restated from time to time, hereinafter called the "Agreement");

WHEREAS, Contractor is the wholly-owned subsidiary of Guarantor; and

WHEREAS, in consideration of Owner's entering into the Agreement with Contractor, and as a condition to any obligations of Owner to Contractor under the Agreement, the Guarantor has agreed, at the request of Contractor, to guarantee unconditionally any and all obligations of the Contractor to Owner as provided herein and Guarantor and Owner acknowledge and agree that without such unconditional guarantee from Guarantor as provided herein, Owner would not have entered into the Agreement;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Guarantor, the Guarantor agrees with Owner as follows:

1. Guarantor hereby unconditionally and absolutely guarantees the due and punctual performance, payment and observance by Contractor of all Contractor's obligations under the Agreement, for the timely and lien free completion of the Work (as defined in the Agreement) and payment of all costs, expenses, charges and fees, including cost overruns, relating to the foregoing, and the payment of all amounts owing to Owner pursuant to the Agreement. This Guaranty shall take effect on the date hereof as an absolute, irrevocable and continuing Guaranty. Notwithstanding the provisions of this Section 1, Guarantor's guarantee obligations under this Guaranty shall terminate and be of no further legal force and effect upon Final Payment by Owner pursuant to the Agreement.

2. If Contractor fails to perform any of its obligations under the Agreement, or commits any breach thereof, Guarantor shall immediately, at its sole cost and expense: (i) take such steps as may be necessary to cause Contractor to perform all Contractor's obligations under the Agreement, or remedy any breach thereof; or (ii) take such steps as may be necessary, itself or through a third party other than Contractor, to perform all of Contractor's obligations under the Agreement, or to remedy any breach thereof.

3. If Guarantor fails at any time to perform any obligations under this Guaranty after written demand having been made by Owner, Owner may, without the need to give further notice thereof to Guarantor, perform itself, or have any third party perform, any such obligations and Guarantor shall indemnify Owner from and against any and all losses, damages, costs and expenses which may be incurred by Owner by reason of or in connection with any such failure, including without limitation any and all costs incurred by Owner in so performing or so having performed, such obligations.

4. Subject to Section 1 hereof, Guarantor, shall not in any way be released from any of its obligations arising under this Guaranty, nor shall any such obligations be diminished, impaired or reduced by: (i) termination of the Agreement; (ii) alterations to the terms of the Agreement; (iii) forbearance or forgiveness in respect of any matter or thing concerning the Contractor on the part of Owner or Contractor; or (iv) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution, death, or lack of power of Contractor or Guarantor or any other

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person or entity at any time liable for the performance of all or part of the obligations guaranteed under this Guaranty or any changes in or reorganization of Contractor.

5. The rights and remedies of Owner arising under this Guaranty shall operate independently of any rights and remedies Owner may have arising under any other agreement (including without limitation the Agreement) and Owner shall not be required to proceed first or at all against Contractor or any other person before enforcing the terms of the Guaranty.

6. Guarantor represents and warrants that: (a) Guarantor has the power and authority to execute, deliver and perform its obligations under this Guaranty, (b) the execution, delivery and performance by Guarantor of this Guaranty do not violate or conflict with, breach, or constitute a default under, or require consent under any agreement or document binding or covering Guarantor or any of its property, (c) this Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, and (d) (i) this Guaranty is not given with actual intent to hinder, delay or defraud any entity to which Guarantor is, or will become on or after the date of this Guaranty, indebted, (ii) Guarantor has received at least a reasonably equivalent value in exchange for the giving of this Guaranty, (iii) Guarantor is not insolvent on the date of this Guaranty and will not become insolvent as a result of giving this Guaranty, and (iv) Guarantor does not intend to incur debts that will be beyond Guarantor's ability to pay as such debts become due.

7. In the event Owner brings an action to enforce this Guaranty, Guarantor will reimburse Owner for all expenses incurred by Owner, including, but not limited to, reasonable attorneys' fees and costs.

8. All notices, advices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations or denials that may be required or otherwise provided for or contemplated under the terms of this Guaranty for any party to serve upon or give to any other shall, whether or not so stated, be in writing, and if not so in writing shall not be deemed to have been given, and be either personally served, sent by electronic communication, whether by telex, telegram, or telecopying, sent by recognized overnight courier service, or sent with return receipt requested by registered or certified mail with postage prepaid (including registration or certification charges) in a securely enclosed and sealed envelope, to the following addresses:

To Owner:

Kenn Wynn, President
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4738
Telephone No. (702) 733-4812

and

Todd Nisbet, Executive Vice President—Project Director
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No. (702) 733-4715
Telephone No. (702) 733-4497

To Guarantor:

James A. Barrett, Jr., Secretary/Treasurer
Austi, Inc.
4495 South Polaris Avenue
Las Vegas, Nevada 89103
Facsimile No. (702) 739-8521
Telephone No. (702) 703-9413

and

Christopher L. Kaempfer, Esq.
Kummer Kaempfer Bonner & Renshaw
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, Nevada 89109
Facsimile No: (702) 796-7181
Telephone No.: (702) 792-7000

9. Guarantor makes the following representations and warranties, which shall be continuing representations and warranties until such time as Owner makes Final Payment pursuant to the Agreement:

a. All financial statements and data that have been given to Owner by Guarantor with respect to Guarantor (A) are complete and correct in all material respects as of the date given; (B) accurately present in all material respects the financial condition of Guarantor on each date as of which the same have been furnished; and (C) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby.

b. There has been no material adverse change in the financial condition of Guarantor since (A) the date of the most recent financial statements given to Owner with respect to Guarantor, or (B) the date of the financial statements given to Owner immediately prior to the date hereof.

c. Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which Guarantor is a party, default in which may materially and adversely affect Guarantor's ability to fulfill its obligations hereunder.

d. All other reports, papers and written data and information given to Owner by Guarantor with respect to Guarantor are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Owner true and accurate knowledge of the subject matter.

e. There is not now pending against or affecting Guarantor, nor to the knowledge of Guarantor is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency that, if adversely determined, would materially impair or affect the financial condition of Guarantor.

f. Guarantor has filed all federal, state, provincial, county, municipal and other income tax returns required to have been filed by Guarantor and has paid all taxes that have become due pursuant to such returns or pursuant to any assessments received by Guarantor, and Guarantor does not know of any basis for any material additional assessment against Guarantor in respect of such taxes.

g. Guarantor shall file all federal, state, provincial, county, municipal and other income tax returns required to be filed by Guarantor and pay before the same become delinquent all taxes that become due pursuant to such returns or pursuant to any assessments received by Guarantor.

h. Guarantor shall promptly and faithfully comply with all laws, ordinances, rules, regulations and requirements, both present and future, of every duly constituted governmental authority or agency having jurisdiction that may be enforceable against and applicable to Guarantor.

i. Guarantor shall advise Owner in writing of any material adverse change in the business or financial condition of Guarantor and promptly furnish to Owner such information about the financial condition of Guarantor as Owner shall reasonably request.

10. Time is of the essence of this Guaranty and all of its provisions.

11. This Guaranty is intended as a final expression of this agreement of guaranty and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between Guarantor and Owner, no usage of the trade, and no parole or extrinsic evidence of any nature, shall be used or be relevant to supplement, explain, contradict or modify the terms and/or provisions of this Guaranty.

12. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, such invalidity, voidness or unenforceability shall not impair, diminish, void, invalidate or affect in any way any other terms, provisions, covenants and conditions hereof or any applications thereof, all of which shall continue in full force and effect.

13. This Guaranty shall in all respects be construed and interpreted and shall operate in accordance with the laws of the State of Nevada.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed the day and year first above written.

GUARANTOR HEREBY ACKNOWLEDGES TO HAVE BEEN GIVEN THE OPPORTUNITY TO READ THIS DOCUMENT CAREFULLY AND TO REVIEW IT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING IT, AND ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND EFFECT OF THIS DOCUMENT BEFORE SIGNING IT.

GUARANTOR:

AUSTI, INC.,
a Nevada corporation

By: /s/ James A. Barrett

Its: Secretary/Treasurer

Exhibit 10.13

DESIGN/BUILD AGREEMENT

By and Between

WYNN LAS VEGAS, LLC,
a Nevada limited liability company
("Owner")

and

BOMEL CONSTRUCTION COMPANY, INC.,
a California corporation

("Contractor")

for

a Parking Structure to be located at
3131 Las Vegas Boulevard South,
Las Vegas, Nevada

DESIGN BUILD AGREEMENT

THIS DESIGN BUILD AGREEMENT (the "**Agreement**") is made effective as of June 6, 2002 (the "**Effective Date**"), by and between WYNN LAS VEGAS, LLC, a Nevada limited liability company ("**Owner**"), and BOMEL CONSTRUCTION COMPANY, INC., a California corporation, holding Nevada State Contractor's License No. 0031451 ("**Contractor**"), with respect to the following facts:

RECITALS

A. Owner owns the real property commonly known as 3131 Las Vegas Boulevard South, Las Vegas, Nevada, as more particularly described on *Exhibit A* attached hereto (the "**Property**").

B. Owner plans to construct on the Property a first class luxury resort and casino, including high-rise hotel space and low-rise space comprised of casino and gaming areas, restaurants, retail, convention and meeting areas, a showroom, and exterior features (the "**Casino Improvements**"). Owner will be retaining separate architects, contractors and consultants ("**Other Builders**") to design and construct the Casino Improvements on the Property.

C. In addition to the Casino Improvements, Owner desires to have constructed on a portion of the Property a state-of-the-art new parking structure, consisting of approximately 640,000 square feet of garage parking space and not less than 1,840 parking spaces with easy access to the Casino Improvements and associated improvements, including, without limitation, certain unfinished retail shell space (collectively, the "**Project**"), and desires to engage Contractor to design, construct, and supervise the construction of, the Project, in full accordance with the Contract Documents (as defined in *Section 1.2* of this Agreement), including the Plans and Specifications (as defined in *Section 1.2.2* of this Agreement), and Contractor desires to accept such engagement, upon the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor hereby adopt and incorporate the foregoing Recitals and agree as follows:

1. CONTRACT DOCUMENTS AND GOVERNMENTAL REQUIREMENTS.

1.1 Agreement Governs. The intent of the Contract Documents is to include all items appropriate or necessary for the proper execution and Completion of the Work (as defined in *Section 2.7.2* of this Agreement) by Contractor to Owner's satisfaction. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Nothing contained in this *Section 1.1* shall relieve Contractor of its obligations under this Agreement, including, without limitation, under *Section 5.10* of this Agreement, or shall create a contractual or professional relationship between Owner and any person or entity other than Contractor. If any provision of the Contract Documents conflicts with any other provision of the Contract Documents, the provision requiring the highest degree of care or performance or the highest quality of materials, as the case may be, shall prevail, unless Contractor is otherwise instructed in writing by Owner. When only one product and manufacturer is specified, this is the basis of the Contract (as defined in *Section 1.2.9* of this Agreement), unless substitution or exception is approved in writing by Owner.

1.2 Contract Documents. The "**Contract Documents**" consist of the following documents:

1.2.1 This Agreement, including any exhibits and appendices thereto.

1.2.2 The "**Plans and Specifications**" as approved by Owner and Owner's Lenders (as defined in *Section 14.1* of this Agreement), including, without limitation, all architectural, structural, civil, mechanical, plumbing, electrical, grading, utility, security and low voltage

drawings and specifications, and all supplements, amendments and modifications thereto as approved by Owner and Owner's Lenders.

1.2.3 The Project Design Criteria and Drawings (as defined in *Section 5.2* of this Agreement), and attached hereto as *Exhibit B*.

1.2.4 The Project Design and Construction Schedule (as defined in *Section 4.2.1* of this Agreement), and attached hereto as *Exhibit C*.

1.2.5 Any Submittals as defined in *Section 5.12* of this Agreement.

1.2.6 The Schedule of Values (as defined in *Section 2.3.3* of this Agreement).

1.2.7 The Technical Studies and Reports (as defined in *Section 1.4.1* of this Agreement).

1.2.8 The Permits and Entitlements as set forth on *Exhibit D* attached hereto.

1.2.9 All supplements, addenda, modifications and amendments to any of the foregoing in this *Section 1.2*, from time to time approved by Owner in writing, including, without limitation, any executed Change Orders (as defined in *Section 13.2* of this Agreement) and Construction Change Directives (as defined in *Section 13.4* of this Agreement), and such other documents expressly referred to in the foregoing documents as being a part of the Contract Documents. These Contract Documents form the "**Contract**," and are as fully a part of the Contract as if attached to this Agreement or repeated in this Agreement.

1.3 Design Services. Contractor shall be responsible for procuring and furnishing all architectural and structural engineering services relating to the Project, and shall be responsible for coordinating, monitoring, managing and finalizing all other design services relating to the Project, including, without limitation, civil, structural, mechanical, plumbing, electrical, utility, security and low voltage engineering services (collectively, "**Design Services**"), by and through qualified and experienced design professionals duly licensed and registered in the State of Nevada and by any other required local or professional authorities and approved by Owner in advance (the "**Project Architect**"). Any reference to Project Architect shall include, without limitation, any architects and structural engineers and any other design professionals performing Work relating to the Project for Contractor. At the request of Owner, Contractor shall supply copies of Project Architect's licenses and registrations to Owner.

1.3.1 Owner shall pay for the services of consultants selected by Owner to provide under the coordination of Contractor the civil, mechanical, plumbing, electrical, grading, utility, security and low voltage drawings and specifications for the Project. *Provided, however*, that any drawings, specifications, work or services or any other information or documents provided by Owner, directly or through consultants, to Contractor and Project Architect in connection with the Contract or the Work are provided solely for the convenience of Contractor only, and without any representation, warranty or guarantee of accuracy, adequacy, correctness or completeness by Owner, and Owner hereby expressly disclaims, on its behalf and on behalf of any of its consultants, all such warranties, guarantees and representations. Except to the extent the information, documents and materials supplied by Owner or its consultants contain inaccurate information that was not known to Contractor to be inaccurate (and such inaccuracy would not have been reasonably discovered by Contractor or Project Architect based on their skills, experience and knowledge or their diligent review of such information, documents and materials and the terms and scope of the Contract Documents), Contractor assumes the risk of such conditions and shall fully complete the Work within the Contract Sum (as defined in *Section 2.1* of this Agreement) and by the Scheduled Completion Date (as defined in *Section 4.2.1* of this Agreement) with no adjustments.

1.3.2 Contractor shall cause Project Architect to cooperate with Owner's consultants, to coordinate, monitor, and manage the services of such consultants and to take all necessary steps (other than payment of the fees of such consultants) to cause such consultants' drawings and specifications to be timely furnished, completed and finalized in accordance with the Project Design and Construction Schedule for incorporation by Project Architect into the Plans and Specifications. In furtherance of and without in any way limiting the foregoing, Contractor shall cause Project Architect to diligently review all work, services, drawings and specifications furnished by Owner's consultants for hazards, inconsistencies, discrepancies, inaccuracies, errors, incompleteness or lack of detail which should be apparent to Project Architect given Project Architect's skills, experience and training or discernible by Project Architect upon a reasonable and diligent review of such work, services, drawings, and specifications and shall cause Project Architect to promptly notify Owner and any of Owner's consultants in writing of any hazards, inconsistencies, discrepancies, inaccuracies, errors, incompleteness or lack of detail of which Project Architect becomes aware and, prior to proceeding with any of the Work affected thereby, to obtain written instructions from Owner on how to proceed. Contractor also shall cause Project Architect to promptly notify Owner and any of Owner's consultants in writing of any changes or revisions to Project Architect's work or services, including any drawings or specifications, which might affect the work, services, drawings and specifications of Owner or Owner's consultants.

1.3.3 Project Architect shall (a) be the architect of record for the Project; (b) create and furnish the architectural and structural drawings and specifications for the Plans and Specifications; (c) be responsible for the final coordination, management and assembly of the Plans and Specifications, including the incorporation of the civil, mechanical, plumbing, electrical, grading, utility, security and low voltage drawings and specifications for the Project into the Plans and Specifications; (d) submit the Plans and Specifications to Owner and Owner's Lenders for their prior approval; (e) sign and affix with its registration stamp or seal that portion of the Plans and Specifications created by Project Architect, including the architectural and structural drawings and specifications (and any approved amendments, modifications and/or supplements thereto), and shall cause all other portions of the Plans and Specifications, including, the civil, mechanical, plumbing, electrical, grading, utility, security and low voltage drawings and specifications (and any approved amendments, modifications and/or supplements thereto), to be signed by and affixed with the appropriate registration stamps or seals of the applicable licensed consultants that created the same; (f) from time to time (as appropriate to meet the Project Design and Construction Schedule and the Scheduled Completion Date), submit for approval and obtain all necessary approvals for the Plans and Specifications (including any amendments, modifications and/or supplements thereto approved by Owner and Owner's Lenders) from the appropriate governmental authorities or other parties having approval rights relating to the Project; and (g) at all times perform the Work (as defined in *Section 13.12* of this Agreement) and act with the normal and customary degree of care and skill used by members of the architectural and engineering professions practicing under similar conditions at the same time and locality and on projects of similar size, scope and complexity.

1.3.4 In the event of the death, resignation, or refusal or inability to act of Project Architect, or if for any reason Project Architect is removed or is no longer acting as Project Architect for the Project, Contractor shall promptly designate in writing a replacement Project Architect who shall be a qualified and experienced design professional duly licensed and registered in the State of Nevada and by any other required local or professional authorities. Such written designation shall be effective only when delivered to and approved in writing by Owner.

1.4 Compliance with Contract Documents and Governmental Requirements.

1.4.1 Contractor shall, and shall cause all Subcontractors (as defined in *Section 13.10* of this Agreement) to, construct and perform the Work in a good and workmanlike manner in strict compliance with (a) the Contract Documents, including, without limitation, the Plans and Specifications, and all things indicated thereon or which should be inferred therefrom given Contractor's status as a Contractor experienced with construction projects similar in size and complexity to the Work, and the Project Design and Construction Schedule, (b) all Governmental Requirements (as defined in *Section 13.8* of this Agreement), and (c) the "**Technical Studies and Reports**" set forth on *Exhibit E* attached to this Agreement.

1.4.2 Contractor represents to Owner that Contractor is thoroughly familiar with all Governmental Requirements. Governmental Requirements shall supersede the Contract Documents if there is any conflict; *provided, however*, that if any Governmental Requirement shall necessitate a change to or deviation from the Contract Documents, Contractor shall obtain Owner's written consent in the form of a Change Order prior to implementing such change. Contractor shall be responsible for failing to report to Owner any discrepancy between the Contract Documents and Governmental Requirements. If Contractor performs any part of the Work in violation of any such Governmental Requirements, Contractor shall bear all costs of correction and adverse scheduling impacts; *provided, however*, that should any governmental authority having jurisdiction over the Work mandate compliance with any changes to applicable Governmental Requirements that have been enacted or have become effective after the Effective Date, Contractor shall, subject to consultation with and written approval by Owner, construct the Work in accordance with such Governmental Requirements, the increased actual cost of which (if any) will be added to the Contract Sum pursuant to a Change Order under *Article 3* of this Agreement, unless Contractor should have reasonably anticipated or planned for such change.

1.4.3 Contractor shall furnish, perform and complete all Work required to complete the Project in accordance with the Contract Documents. Contractor shall be responsible for assembling all documentation necessary to obtain, and shall itself obtain or through Project Architect obtain, all permits and other approvals required to be obtained for the timely Completion of the Work from the appropriate governmental authorities or other parties having approval rights relating to the Project.

2. CONTRACT SUM; METHOD OF PAYMENT.

2.1 Contract Sum. Subject to the terms and conditions of this Agreement, Owner shall pay to Contractor for Contractor's complete performance under the Contract, including, without limitation, the design, construction and completion of all Work for the Project, a lump sum total amount of Nine Million Eight Hundred Fifty Thousand Dollars and No Cents ($9,850,000.00) (the "**Contract Sum**"). Contractor is not and shall not be entitled to any fee, payment, compensation or reimbursement or other sum under this Agreement or the other Contract Documents or arising out of or relating to the Work or the Project, other than the Contract Sum. The Contract Sum may be adjusted only pursuant to Change Orders as provided for in *Article 3* of this Agreement. As stipulated in the OCIP Manual (as defined in *Section 10.1.2* of this Agreement), upon completion of the Work, the Contract Sum shall be adjusted downward to remove the cost of certain insurance, as determined pursuant to the OCIP Audit (as defined in *Section 10.1.3* of this Agreement).

2.2 Contractor Responsible for Expenditures in Excess of Contract Sum. The Contract Sum is the maximum cost to Owner for the completion of the Project, including, without limitation, the full performance of all Work and all services by Contractor and its Subcontractors and Vendors (as defined in *Section 13.11* of this Agreement). Contractor shall have sole responsibility to pay for any expenditures, costs and/or expenses in excess of the Contract Sum. If,

at any point, Owner reasonably believes that, based on the progress of the Work, the Work cannot be completed for the Contract Sum, Owner shall have the right to require Contractor to provide Owner with satisfactory evidence of funds available to Contractor to pay any anticipated overage, and cause Contractor to provide Owner a perfected first priority lien on or security interest in such funds and execute such security agreements as may be required. Contractor's failure to timely provide such evidence of available funds and/or a perfected first lien, shall constitute a default pursuant to *Section 8.1* of this Agreement.

2.3 Payment Application.

2.3.1 Except for the retention or withholding specified below, or as otherwise expressly provided in this Agreement, the Contract Sum shall be paid over the course of the Project and in proportion to the Work completed during the applicable pay period, based on the percentage that such completed Work bears to the total Work provided for in the Schedule of Values (as defined in *Section 2.3.3* of this Agreement) as reasonably determined by Owner. On or before the fifth (5^{th}) calendar day of each month during the term of this Agreement, Contractor shall deliver a statement to Owner and Owner's Lenders on AIA G701 and G702 forms or such other forms as are specified by and acceptable to Owner and Owner's Lenders ("**Payment Application**"), certified by Contractor as correct, and representative of the Work completed during the preceding calendar month. Contractor shall not submit more than one Payment Application per month unless otherwise requested by Owner. Each Payment Application shall specify:

2.3.1.1 the Work performed during such preceding calendar month;

2.3.1.2 the portion of the Contract Sum to be paid by Owner pursuant to the terms of this Agreement and the Schedule of Values;

2.3.1.3 for each category and portion of the Work: (1) the amount requested on all previous Payment Applications, (2) the amount requested on the current Payment Application, and (3) the amount allocated in the Schedule of Values to the Work yet to be completed;

2.3.1.4 Retainage (as defined in *Section 2.3.7* of this Agreement) in the amount provided for pursuant to *Section 2.3.7* of this Agreement;

2.3.1.5 the percentage completed of each portion of the Work as of the end of the period covered by the Payment Application, shown as both (1) the percentage obtained by dividing the completed portions of the Work by the total Work referenced in the Schedule of

Values, and (2) the percentage obtained by dividing (a) the sum of the payments made to Contractor pursuant to prior Payment Applications and the payment requested in the current Payment Application by (b) the Contract Sum; and

2.3.1.6 such additional information and documentation regarding the progress of the Work and the requested payment under the Payment Application as Owner and/or Owner's Lenders may reasonably require.

2.3.2 All blanks and columns in each Payment Application must be completed. The cost for any Design Services included in any Payment Application shall be shown as a separate item therein.

2.3.3 "**Schedule of Values**" means the budget (as prepared by Contractor and submitted to and approved in writing by Owner) outlining the Work and allocating values among all portions or categories of the Work. The initial Schedule of Values shall be submitted by Contractor to Owner and Owner's Lenders for their prior written approval as a condition precedent to Contractor being paid under Contractor's first Payment Application. The

Schedule of Values may be modified only with the prior written approval of Owner. Following any Change Order or Construction Change Directive, the Schedule of Values shall be adjusted by Contractor as necessary, in each case subject to Owner's prior written approval, to reflect accurately the values of the various portions and categories of the Work. The Schedule of Values as approved by Owner shall be used as the basis for all Payment Applications.

2.3.4 Except with Owner's prior written consent, Contractor shall not make advance payments to Subcontractors or Vendors and, except as provided in *Section 2.6* of this Agreement, shall not be entitled to payment for the cost of any equipment or materials which have not been delivered and incorporated into the Project or stored at the Property in a manner reasonably satisfactory to Owner and/or Owner's Lenders. Except as expressly provided in the Contractor's Certificate (defined in *Section 2.3.6* of this Agreement), no Payment Application shall include requests for payment of amounts Contractor does not intend to pay promptly to a Subcontractor or Vendor because of a dispute or other reason.

2.3.5 Each Payment Application shall include signed and acknowledged (by a notary) Conditional Waivers and Releases of Liens Upon Progress Payment in the form attached hereto as *Exhibit F* from Contractor and each Subcontractor and Vendor for all Work performed to date that is covered by such Payment Application, and signed and acknowledged Unconditional Waivers and Releases of Liens Upon Progress Payment in the form attached hereto as *Exhibit G* from Contractor and each Subcontractor and Vendor for all Work that was covered by the immediately preceding Payment Application. Execution and delivery of such waivers shall be an absolute condition precedent to Owner's duty to pay Contractor pursuant to any Payment Application. Notwithstanding the foregoing, and subject to all other terms of this Agreement, to the extent Contractor fails to provide any of the foregoing waivers and releases of lien when required ("Outstanding Releases"), Contractor shall provide to Owner's and Owner's Lenders' title insurers, from time to time upon Owner's request and as a condition to any progress or other payment to Contractor, such affidavits, indemnities, certificates and other instruments as such title insurers require to issue to Owner and Owner's Lenders, as a condition to any progress or other payment to Contractor, one or more endorsements to their respective title insurance policies insuring the lien free status of the Work and Property (Contractor's failure to cause the title insurer to provide the required endorsement(s) shall be a breach of this Agreement); provided, however, that at no time shall the aggregate of all Outstanding Releases represent Work with an aggregate value in excess of $200,000. In addition, Owner may at any time direct Contractor to submit an affidavit that all payrolls, invoices for material and equipment, and other indebtedness connected with the Work and associated with a Payment Application have been paid.

2.3.6 Each Payment Application also shall include a "**Contractor's Certificate**," in form and substance identical to *Exhibit H* attached to this Agreement, signed by Contractor.

2.3.7 In addition to amounts, if any, withheld pursuant to *Sections 2.7.6 and 2.8* of this Agreement, Owner hereby gives written notice to Contractor that Owner shall withhold from each payment to Contractor an amount (the "**Retainage**") equal to five percent (5%) of that payment, which Retainage shall be retained by Owner and paid to Contractor sixty (60) calendar days following Completion of the Work (as defined in *Section 2.7.2* of this Agreement).

2.4 Progress Payments.

2.4.1 Within twenty (20) calendar days following Owner's and Owner's Lenders' receipt of a complete Payment Application and all required submittals under *Section 2.3* of this Agreement, Owner shall make payment of any properly due amounts to Contractor, subject to the approvals required under this *Section 2.4*, and less any amount which may be retained or

withheld pursuant to this Agreement, including, without limitation, *Sections 2.3.7, 2.7.6 and/or 2.8* of this Agreement. This *Section 2.4.1* shall constitute a "schedule for payment" as described in Section 624.609(1)(a) of the Nevada Revised Statutes.

2.4.2 During the 20-calendar day period referred to in *Section 2.4.1* above, Owner may approve or disapprove and/or withhold payment on, in whole or in part, a Payment Application based on any reasonable grounds, including, but not limited to:

2.4.2.1 a failure of Contractor to furnish any required lien releases, insurance certificates, or bonds in a timely manner;

2.4.2.2 a failure of Contractor to make payments promptly to Subcontractors and/or Vendors;

2.4.2.3 Owner's good faith belief that the Work cannot be completed for the unpaid balance of the Contract Sum;

2.4.2.4 regarding any particular portion of the Work as shown on the Schedule of Values, a determination by Owner that an amount requested attributable to a portion of the Work was not actually completed or the amount requested represents a greater percentage of the

Work than actually completed;

2.4.2.5 Owner's good faith belief that the Work will not be completed by the Scheduled Completion Date;

2.4.2.6 damage to property or Work or injury to persons attributable to the acts or omissions of Contractor, Project Architect, or any Subcontractor or Vendor;

2.4.2.7 unsatisfactory prosecution of the Work;

2.4.2.8 lack of required documentation;

2.4.2.9 deviations from the Contract Documents without an applicable Change Order or Construction Change Directive;

2.4.2.10 the filing or existence of liens or claims against Owner, the Property, the Project or the Work arising out of or relating to Contractor's performance of the Work or other acts or omissions of Contractor, any Subcontractor or Vendor;

2.4.2.11 a determination by Owner to nullify in whole or in part a prior approval of a Payment Application and/or prior payment made, because of subsequently discovered evidence or subsequent observations which otherwise would allow Owner to withhold payment pursuant to this *Section 2.4* or elsewhere in the Contract Documents;

2.4.2.12 Owner's Lenders' inability (if not the fault of Owner) to obtain (1) one or more title insurance endorsements to Owner's Lenders' title policy, showing no intervening or other liens, lien rights or encumbrances upon the Property or any improvements relating to the whole or any portion of the Work prior to any Lender Liens (as defined in *Section 15.1* of this Agreement), other than those approved in writing by Owner's Lenders, and insuring the full amount of the disbursement and its priority satisfactory to Owner and Owner's Lenders, and showing no encroachments by any portion of the Work and proper location of foundations, or (2) a satisfactory report under the Nevada Uniform Commercial Code showing no liens or interests (other than those of Owner's Lenders) relating to the whole or any portion of the Work, including, without limitation, any improvements; or any failure of Contractor or any Subcontractor to comply with *Section 15.1* of this Agreement;

2.4.2.13 Contractor's failure to obtain, comply with and keep valid and in full force, and deliver copies to Owner of, all approvals, permits, certifications, consents and licenses of governmental authorities or other parties having jurisdiction over the Property, the Project or the Work or contractual rights to approve or inspect any of the foregoing which are necessary at the stage of construction and/or otherwise existing and required to be complied with or satisfied when such disbursement to Contractor is to be made to enable Completion of the Work on or before the Scheduled Completion Date;

2.4.2.14 an order or statement shall have been made by or received from any governmental, administrative or regulatory authority or agency stating that the whole or any part of the Work, and/or any proposed change thereto, for which Contractor or any Subcontractor is responsible or which relates to Contractor's or any Subcontractor's activities is in violation of any Governmental Requirements, unless such order or statement has been timely corrected to the satisfaction of both the applicable governmental agency and Owner and evidence of such timely correction shall have been provided to Owner in form and substance satisfactory to Owner;

2.4.2.15 defective Work not remedied; and/or

2.4.2.16 any other material breach or default or failure to perform by Contractor under the Contract Documents.

2.4.3 If Owner and/or Owner's Lenders do not approve the full amount of the Payment Application, Owner shall provide written notice to Contractor and shall make payment of the lesser of the amount (if any) that Owner and Owner's Lenders have approved within the twenty (20)-calendar day period provided for in *Section 2.4.1* of this Agreement (less any amount which may be retained or withheld pursuant to *Sections 2.3.7, 2.7.6 and/or 2.8* of this Agreement). When the reason(s) for withholding approval are removed to Owner's and Owner's Lenders satisfaction, approval will be made for amounts previously withheld, and Owner will pay such amounts (less amounts properly withheld or retained) with the next regularly scheduled payment.

2.5 Payments by Contractor. Contractor shall promptly pay each Subcontractor and Vendor, within five (5) business days after receipt of payment from Owner, the amount to which said Subcontractor or Vendor is entitled on account of such Subcontractor's or Vendor's portion of the Work, as reflected in the Payment Application and reflecting Retainage in accordance with *Section 2.3.7* of this Agreement or amounts withheld under this Agreement. Contractor shall, by appropriate agreement with each Subcontractor and Vendor, require each Subcontractor and Vendor to make payments to their respective Subcontractors and Vendors in a similar manner.

2.6 Materials Off-Site. All materials which are the subject of a Payment Application shall be stored at all times at the Project, in a bonded warehouse or such other secured facility satisfactory to Owner and Owner's Lenders, or, at the premises of the manufacturer or fabricator (in which event the materials shall be appropriately marked and identified with the applicable purchase contract and physically segregated in an area with access to a public street), until the materials are incorporated into the Project; provided that if the materials are stored with the manufacturer or fabricator, Owner must receive evidence satisfactory to Owner of the creditworthiness of the manufacturer or fabricator and/or Contractor shall procure and deliver or cause to be procured and delivered to Owner such dual obligee performance and labor and

material payment bond or bonds, in form, substance and amount satisfactory to Owner and Owner's Lenders, as Owner and Owner's Lenders may require. Furthermore, Contractor shall:

2.6.1 use the materials only for construction of the Project, and not make any transfer thereof or permit any lien to attach thereto which could materially impair the ability of Owner to use the materials for such purpose;

2.6.2 take or cause to be taken all actions necessary to maintain, preserve and protect the materials and keep them in good condition and repair, and to comply with all laws, regulations and ordinances relating to the ownership, storage or use of the materials;

2.6.3 cause to be delivered to Owner the original warehouse receipt (and any bailee waivers where bailee rights exist) covering any stored materials, and ensure that such stored materials have been stored in such a way as to eliminate the possibility that they will be commingled with other materials or projects; and

2.6.4 ensure that Owner and Owner's Lenders may enter upon any property on which the materials may be stored to inspect them at any reasonable time.

2.6.5 If Contractor shall fail to perform any of its obligations under this *Section 2.6* after Owner has made payment to Contractor for the materials, Owner or Owner's Lenders may, but shall not be obligated to, after written notice to Contractor, take such actions and expend such sums as may be necessary in their respective judgments to protect and preserve Owner's title and Owner's Lenders' security interest in such materials, and all such expenditures so incurred (including, without limitation, attorneys' fees and disbursements) shall be repayable by Contractor promptly on demand with interest thereon per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

2.7 Final Payment.

2.7.1 Final payment ("**Final Payment**"), consisting of the entire unpaid balance of the Contract Sum, including Retainage held pursuant to *Section 2.3.7* of this Agreement, shall be made to Contractor within sixty (60) calendar days after Completion of the Work.

2.7.2 "**Completion of the Work**" shall be deemed to have occurred after Substantial Completion of the Work when (i) the Contract has been completely performed by Contractor in accordance with the Contract Documents as determined by Owner and Owner's Lenders, including, without limitation, completion of all "punch-list" work (unless Owner has with written notice to Contractor elected to retain sufficient funds to protect it against the nonperformance of such "punch-list" work), (ii) Contractor has delivered each and all of the items described in *Sections 2.7.5.1 through 2.7.5.12* of this Agreement, (iii) Owner has accepted the Work in writing, and (iv) the OCIP Audit (as defined in *Section 10.1.3* of this Agreement) as it relates to the Project has been completed and any required downward adjustments in the Contract Sum have been made as described in *Sections 2.1 and 10.1.3* of this Agreement.

2.7.3 Contractor shall submit, with its final Payment Application, an Unconditional Waiver and Release of Liens Upon Final Payment in the form attached hereto as *Exhibit I* executed by Contractor, and by any additional parties Owner designates including, without limitation, all Subcontractors and Vendors.

2.7.4 Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance and upon receipt of an acceptable final Payment Application with all required submittals, Owner and/or Owner's Lenders will promptly make such inspection and, when Owner and Owner's Lenders find the Work acceptable under the Contract Documents and the Contract fully performed, Owner shall approve the Final Payment.

2.7.5 Notwithstanding anything to the contrary in the Contract Documents, Final Payment shall not become due until Contractor submits to Owner and Owner's Lenders:

2.7.5.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness and obligations connected with the Work for which Owner or Owner's Property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;

2.7.5.2 a certificate of the insurer(s) evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be cancelled or allowed to expire until at least 30 calendar days' prior written notice has been given to Owner;

2.7.5.3 a written statement that Contractor knows of no reason that such insurance will not be renewable to cover the period required by the Contract Documents;

2.7.5.4 if required by Owner or Owner's Lenders, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract or the Work which may then or in the future affect Owner, the Project or Property, and to the extent and in such form as may reasonably be designated by Owner or Owner's Lenders (if a Subcontractor or Vendor refuses to furnish a release or waiver required by Owner, Contractor shall within such time as set forth in *Section 5.9* of this Agreement and in accordance with the procedure set forth in *Section 5.9* furnish a bond satisfactory to Owner, in Owner's and Owner's Lenders' sole and absolute discretion, to indemnify Owner against such lien and cause it to be paid and released; if such lien remains unsatisfied after payments are made, Contractor shall immediately refund to Owner and indemnify Owner against all monies that Owner is compelled to pay in discharging such lien, including all costs and attorneys' fees);

2.7.5.5 an affidavit certifying that Contractor has paid all taxes and all labor costs, including, without limitation, any union dues, health, welfare, pension plan, and other labor associated contributions;

2.7.5.6 all written guarantees and warranties under the Contract for Contractor, Subcontractors and Vendors; all instructions and warranties furnished by manufacturers, suppliers, or Vendors relating to any materials and equipment incorporated in the Work; all required operation and maintenance manuals for major equipment required under the Contract; as-built drawings required under *Section 5.11* of this Agreement; and a survey conducted by a licensed surveyor and paid for by Contractor at its sole cost and expense showing (i) the Work "as built," including, without limitation, the location (both vertically and horizontally) of the Project's structures and improvements (including all foundations) on the Property, the lines of the street(s) abutting the portion of the Property on which the Project is located and the width thereof, and such other matters as are reasonably requested by Owner, and (ii) no encroachments by any part of the Project outside the boundaries of the Property;

2.7.5.7 all certificates of occupancy (or their equivalents) relating to or required for the full use and occupancy of all aspects of the Project (and Owner can fully occupy and utilize the Work for its intended use, including, but not limited to, the ability of vehicles to park and to move freely into, within, and out of the Project and the ability of pedestrians and passengers to access the Property, including the Casino Improvements from the Project as intended by Owner);

2.7.5.8 any documents, instruments, releases, affidavits, certificates and indemnities reasonably required in order to permit Owner and Owner's Lenders to secure endorsements in form and content satisfactory to them to their respective policies of title insurance for the Property, including, without limitation, that no mechanics' or materialmen's liens appear of record, that all Lender Liens are of first priority (including prior to any unrecorded liens or other lien rights), and that there are no encroachments or violations of any recorded covenants, conditions or restrictions affecting the Property;

2.7.5.9 such documents and other items so that Owner will receive and Owner does receive a release and complete refund of all security, bonds and/or cash amounts provided by or on behalf of Owner and held by or for the benefit of any administrative or governmental agency;

2.7.5.10 an accurate list of all Subcontractors and Vendors with their addresses and telephone numbers;

2.7.5.11 a statement of all unresolved claims (and for which payment has been and/or shall be withheld by Owner). Contractor shall separately list by claim number the specific dollar amounts which have previously been submitted as claims by Contractor in good faith and in full compliance with this Agreement; and

2.7.5.12 such other certificates, instruments and affidavits relating to the Work as Owner or Owner's Lenders may reasonably require.

2.7.6 Any unsatisfied conditions to Final Payment as set forth in this *Section 2.7* shall, unless expressly waived in writing by Owner in Owner's sole and absolute discretion, be deemed to be and considered items in dispute allowing Owner to withhold from Final Payment such amounts as permitted by this Agreement. Owner shall give Contractor prior written notice of any such withholding. Contractor shall not be entitled to receive payment on any Payment Application that is inaccurate or incomplete or that contains any material misrepresentation. The rights and remedies of Owner under this *Section 2.7* shall be non-exclusive and shall be in addition to all other remedies available to Owner under this Agreement or at law, in equity or otherwise.

2.7.7 Except for such unresolved claims stated in specific dollar amounts which have been previously filed by Contractor in good faith and in full compliance with this Agreement, the submittal by Contractor of its final Payment Application shall constitute a final and irrevocable release and waiver by Contractor of any and all other claims and causes of action for additional costs allowable under the Contract Documents. This shall include, but not be limited to, any and all claims for additional amounts relating to the unresolved claims so identified by Contractor and claims or potential claims of Subcontractors and Vendors arising out of this Contract, whether or not any such claims or potential claims arise in contract or in tort or were known or unknown at the time of submittal of the final Payment Application.

2.8 Withholding. In addition to any amounts withheld from a Payment Application by Owner pursuant to *Sections 2.3.7 and/or 2.7.6* of this Agreement, in the event of and during any breach or default or failure to perform by Contractor of its obligations pursuant to the Contract Documents, or any third-party claim against Owner arising out of or connected with the Work, Owner shall have the right (and Contractor hereby expressly authorizes Owner) to withhold such amounts and payments to Contractor as Owner in good faith deems necessary to protect Owner against or compensate Owner for any damage, cost, expense and loss attributable to the foregoing, to cure any breach, default or failure to perform, or to assure the payment of claims of third persons, and at Owner's option to apply such sums in such manner as Owner may in good faith deem necessary or proper to secure protection from or to satisfy such claims. Owner shall give

Contractor prior written notice of any such withholding. Owner shall not be deemed in default by reason of withholding payment under this Agreement in good faith.

2.9 Joint Checks. Owner shall have the right (but not the obligation) to issue in its discretion, at any time and from time to time, payment checks for portions of a progress payment or the Final Payment payable jointly to Contractor and the person or persons owed (including, without limitation, any Subcontractor or Vendor). Without limiting the generality of the foregoing, if Contractor fails, neglects, or refuses to pay for labor or services performed or materials or equipment supplied in connection with the Work as payments become due, Owner shall have the right (but not the obligation) upon written notice to Contractor to make payments directly for any and all such labor, materials, or equipment and to deduct the amount of such payment from the Contract Sum. Owner also shall have the right upon five (5) calendar days' prior written notice to Contractor to stop the performance of the Work by Contractor until payment of all amounts due and owing by Contractor has been made and such failure by Contractor to make such payments shall be a material breach under the Contract; provided, however, Owner shall not have any duty to stop the Work.

2.10 Waiver. Owner's payment of any item pursuant to any Payment Application or otherwise shall not constitute approval of the Work or the Payment Application, or result in Owner's waiver of any claims, all of Owner's rights being specifically reserved. A progress payment or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. The acceptance of Final Payment by Contractor, a Subcontractor, and/or a Vendor shall constitute a waiver of all claims by that payee, except those previously made in writing and identified by that payee as unsettled at the time of the Payment Application for the Final Payment.

2.11 Deposits and Payments. If any deposits are required for the purchase of any materials, such deposits will be specifically identified by category and credited against amounts as billed in that category. Contractor agrees to receive and hold all payments to it by Owner as trust funds to be applied only to the payment of the Contract Sum. Contractor will, promptly upon written request from Owner, account for any and all funds theretofore received by Contractor from Owner. Contractor agrees to arrange to purchase such materials or equipment in advance of the time for installation in the Project as may be deemed advisable by Owner or Contractor, provided such purchases in excess of Fifty Thousand Dollars ($50,000.00) are approved by Owner and Owner's Lenders. Upon payment to Contractor of approved deposit amounts, Contractor shall provide Owner with an assignment of Contractor's rights relating to such deposit made and agreement for purchase of such item.

2.12 Title to Materials. Contractor represents and warrants to Owner that (i) title to all of the Work and materials and equipment incorporated into the Work or covered by any Payment Application will pass to Owner upon the earlier of incorporation in the Work or receipt of payment by Contractor, and such title shall be free and clear of all liens, claims, security interests or encumbrances; (ii) the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract Documents; (iii) Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in this Agreement; and (iv) no Work covered by a Payment Application and no material or equipment incorporated in the Work will have been acquired or incorporated into the Work by Contractor, or by any other person performing Work or furnishing materials and equipment for the Project, subject to an agreement under which an interest in the Work or an encumbrance on the Work or the Property is retained by the seller or otherwise imposed by Contractor or such other person. Subject to the terms of this Agreement, including any modifications or waivers of rights provided herein (including, without limitation, *Section 15.1* hereof), the provisions of this Section shall not

be a bar to Contractor's lien rights as to the Property under Nevada state law as to Work for which Contractor has not yet received payment (and to the extent Contractor is entitled to payment).

2.13 Maintenance of Books and Records. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract and as are otherwise reasonably satisfactory to Owner. Contractor's books, records, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, cancelled checks, pay requests, invoices, bills and statements and all other data relating to or arising out of the design and construction of the Work, shall at all times be made available to Owner and Owner's Lenders for inspection, audit, and copying during normal working hours in Anaheim Hills, California. Contractor shall preserve in Anaheim Hills, California, all such records for a period of at least three (3) years after the Completion of the Work or for such longer period as may be required by law.

3. CHANGES IN THE WORK.

3.1 Change Orders.

3.1.1 Changes in the Work (as defined in *Section 13.1* of this Agreement), regardless of impact, shall be made only in accordance with a Change Order or Construction Change Directive. No Change in the Work will increase the Contract Sum, or extend the Scheduled Completion Date, without an accompanying Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or an extension of the Scheduled Completion Date. Notwithstanding anything to the contrary, any and all approvals, consents, Change Orders, and other documents under this Agreement affecting Owner's rights and/or the Work shall be effective only if signed by Owner.

3.1.2 Once the actual cost of such Change in the Work and corresponding extension, if any, in the Scheduled Completion Date have been determined pursuant to this *Article 3*, prior to using such actual cost to make any increase in the Contract Sum, and prior to extending the Scheduled Completion Date, such actual cost and/or extension, as the case may be, shall be reduced and offset by any and all reductions or Changes in the Work which result in a reduced Contract Sum and/or an advancement of the Scheduled Completion Date, as the case may be (i.e., Changes in the Work shall be netted out). Any increase in the Contract Sum as a result of net Changes in the Work shall not exceed the sum of: (i) the aggregate additional amounts (if any) actually paid by Contractor to its Subcontractors and Vendors for the applicable Change in the Work, plus a mark-up on such amounts of not more than five percent (5%) to Contractor, and (ii) the increase (if any) in the actual Cost of the Work (as defined in *Section 13.5* of this Agreement) incurred by Contractor with respect to the applicable Change in the Work to the extent (if any) performed by Contractor directly, plus a mark-up on any such increase incurred by Contractor of not more than ten percent (10%) to Contractor.

3.1.3 At any time and from time to time prior to Completion of the Work, Owner may request Contractor to make Changes in the Work. If Owner desires a Change in the Work, Owner may, in its sole and absolute discretion and in writing, request a Change Proposal from Contractor (a "**Change Proposal Request**"). A Change Proposal Request shall set out, in reasonable detail, the Changes in the Work requested by Owner. Within ten (10) calendar days following its receipt of a Change Proposal Request, Contractor shall issue a Change Proposal (as defined in *Section 13.3* of this Agreement). Contractor also shall issue a Change

Proposal: (i) when Contractor reasonably believes that a Change in the Work is necessary or desirable (pursuant to a right set forth in this Agreement); or (ii) when a Change in the Work is made necessary by Governmental Requirements. Any material Changes in the Work shall require Owner's Lenders' prior approval.

3.1.4 If Contractor refuses or fails to timely provide a Change Proposal requested by Owner, or modifies or alters a Change Proposal Request, or if Owner and Contractor are unable to agree in writing upon the terms of the Change Proposal requested by Owner, including, but not limited to: (i) the amount of increase or decrease in the Contract Sum, or (ii) the length of extension or advancement, if any, of the Scheduled Completion Date, Owner: may (1) issue a Construction Change Directive pursuant to *Section 3.2* of this Agreement; (2) require Contractor to obtain at least three bids from qualified Subcontractors to perform such Change in the Work, and Owner may designate the Subcontractor from said bidders to perform such Change in the Work, and/or (3) engage other contractors, subcontractors and/or laborers to perform such Change in the Work, and Contractor shall cooperate fully with any of such persons, and any such hiring by Owner or issuance of a Construction Change Directive shall not affect this Agreement in any manner (other to provide for a reduction in the Contract Sum, equal to the amount of any Work reflected in the Schedule of Values not being performed by Contractor) and shall not be deemed to be a constructive termination.

3.1.5 No dispute between Owner and Contractor relating to: (i) a change in the Contract Sum or the Scheduled Completion Date due to any Change in the Work, or (ii) any Change in the Work (either additive or reductive) shall entitle Contractor to walk off the Project or to slow down the Work.

3.2 Construction Change Directive.

3.2.1 Owner may, by Construction Change Directive, without invalidating or breaching the Contract, order a Change in the Work. Upon receipt of a Construction Change Directive from Owner, Contractor shall promptly proceed with the Change in the Work involved (including implementing any reductions in the Work) and advise Owner of the Contractor's agreement (in which case Contractor shall sign and return the Construction Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proper adjustment, if any, in the Contract Sum and/or the Scheduled Completion Date.

3.2.2 A Construction Change Directive signed and unmodified by Contractor indicates the agreement of Contractor therewith, including the method, if any, provided in the Construction Change Directive for determining the adjustment, if any, in the Contract Sum and/or the Scheduled Completion Date. Upon Contractor's written acceptance and delivery thereof to Owner of the unmodified Construction Change Directive, that Construction Change Directive shall become a Change Order. If Contractor fails to advise Owner of its agreement or disagreement with the proposed adjustment in the Contract Sum and/or the Scheduled Completion Date within ten (10) calendar days after the delivery of the Construction Change Directive to Contractor, then the Construction Change Directive shall be deemed approved by Contractor and shall become a Change Order, and Contractor shall have no right to any adjustment to the Contract Sum and/or the Scheduled Completion Date in excess of the adjustments, if any, provided in the Construction Change Directive.

3.2.3 If Contractor disagrees with the method or adjustment in the Contract Sum and/or the Scheduled Completion Date within the ten (10)-calendar day time period provided for in *Section 3.2.2* above, the method and the adjustment shall be submitted to an appropriate consultant for a recommendation or binding resolution as Owner may elect. If the parties are

unable within a reasonable period of time (as determined by Owner) to reach an agreement or binding resolution by the consultant (if Owner elects) under the prior sentence or otherwise, the matter shall be resolved after Completion of the Work, in accordance with *Section 15.11* of this Agreement.

3.2.4 After Owner has issued a Construction Change Directive and pending final determination of the adjustment, if any, in the Contract Sum, any amount not in dispute may be included in Payment Applications to be paid by Owner.

3.3 Surety Waiver. Change Orders or Construction Change Directives as described in this Agreement shall not be subject to inspection or approval by any sureties issuing any performance or labor and material payment bonds in connection with the Project, whether or not the Change Orders (or Construction Change Directives) encompass "substantial" changes in the scope of Work undertaken by Contractor. Contractor shall cause any sureties, in issuing any performance or payment bonds in connection with the Project, to expressly waive any of their respective rights to approve any Change Orders or Construction Change Directives executed by Owner and Contractor.

4. STARTING AND COMPLETION DATE; DELAYS IN THE WORK.

4.1 Commencement of Work. Contractor shall commence the Work in accordance with the Project Design and Construction Schedule no later than June 6, 2002 ("**Date of Commencement**"); provided that commencement of the construction phase of the Work shall commence upon Owner's issuance to Contractor of a written notice to proceed with the construction phase of the Work. If Owner fails to issue such a written notice to proceed in accordance with the Project Design and Construction Schedule, and if no default has occurred under *Section 8.1* of this Agreement and Project Architect has timely provided all Design Services as required under the Contract (including in compliance with the Project Design and Construction Schedule), including the timely submission to Owner for its written approval of acceptable construction documents and the Plans and Specifications and such written approval has been given by Owner, the Scheduled Completion Date shall be extended pursuant to Change Order in accordance with *Article 3* of this Agreement by one day for each full day that Owner fails to issue such notice to proceed.

4.2 Completion of the Work.

4.2.1 Contractor shall proceed expeditiously with adequate forces, and shall achieve Substantial Completion of the Work (as defined in *Section 13.9* of this Agreement) not later than June 27, 2003 (the "**Scheduled Completion Date**"), subject to any Excusable Delays (as defined in *Section 13.7* of this Agreement). Subject to *Section 4.2.2* below, if any Excusable Delays occur and subject to the procedures set forth in *Section 4.2.5* of this Agreement, the Scheduled Completion Date shall be extended by one day for each full day of Excusable Delay delaying "critical path" items. The Scheduled Completion Date also shall be extended or accelerated as the parties may agree pursuant to any Change Order(s) approved by Owner (if any). If minor items remain to be completed after Substantial Completion of the Work (the "**Punchlist Items**"), Contractor shall complete the Punchlist Items and achieve Completion of the Work, within a reasonable time, but in any case not later than sixty (60) calendar days following Substantial Completion of the Work. Contractor has prepared and delivered to Owner a "**Project Design and Construction Schedule**" indicating the time required to complete each portion of the Work. The Owner approved Project Design and Construction Schedule is attached hereto as *Exhibit C* and incorporated in this Agreement by this reference. The Project Design and Construction

Schedule may not be changed without the prior written approval of Owner (and Owner's Lenders as to material changes) and shall identify and label the "critical path" items.

4.2.2 If any Excusable Delay occurs and as a condition precedent to the granting of an extension of time, Contractor shall within five (5) calendar days of the beginning of such Excusable Delay, give Owner written notice of the Excusable Delay, which notice shall include an explanation of the Excusable Delay and its impact on the critical path items of construction (including a description, as fully as practicable, at that time, of the nature, cause and expected duration of the delay), and shall set forth Contractor's proposed new Scheduled Completion Date. If Owner and Contractor agree on the Excusable Delay and its effect, all in accordance with *Section 4.2.5* of this Agreement, any extension of the Scheduled Completion Date shall be reflected in a Change Order which must be approved by Owner (and Owner's Lenders as to material changes) in writing in order to give effect to any extension of the Scheduled Completion Date. If Owner and Contractor are unable to agree, any issue of Excusable Delays shall be resolved after Completion of the Work, in accordance with *Section 15.11* of this Agreement.

4.2.3 Contractor shall keep the Project Design and Construction Schedule up-to-date and revised on a monthly basis. The up-to-date Project Design and Construction Schedule as revised shall be provided by Contractor to Owner on a monthly basis. Contractor also shall forward to Owner and Owner's Lenders each month a monthly summary report of the progress of various parts of the Work under the Contract, describing the existing status of the Work, rate of progress, estimated time of completion, cause of any Delays in the Work (as defined in *Section 13.6* of this Agreement), and a comparison of actual progress with the most recent Project Design and Construction Schedule. If Owner reasonably determines at any time that the progress of the Work, or any portion of the Work, is behind the periods set forth in the Project Design and Construction Schedule or reasonably believes that the Work will not be complete by the Scheduled Completion Date, then immediately following written notice from Owner, Contractor shall submit to Owner for its review and approval a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work, and Owner shall have the right to require Contractor to work its construction crews and Subcontractors and other personnel overtime, and to direct Contractor to take all other necessary action, including, without limitation, increasing the number of personnel and implementing double shifts. Such overtime work and other actions shall continue until such time as the Work has progressed so that it complies with the stage of completion required by the Project Design and Construction Schedule. Additional costs incurred due to such overtime work and other actions shall be at Contractor's sole cost and expense and shall not result in any adjustment in the Contract Sum. Owner's exercise of any of its rights under the Contract Documents including, but not limited to, rights regarding a Change in the Work, or Owner's exercise of any of its remedies, including, but not limited to, Owner's rights under *Section 8.2.2* of this Agreement, or Owner's rights to require correction or re-execution of any Work, shall not under any circumstances be construed as interference with Contractor's performance of the Work.

4.2.4 Other than as expressly allowed and solely to the extent provided for under *Section 8.5* of this Agreement, Contractor agrees for itself and its agents and for its Subcontractors and Vendors, and will cause each Subcontractor to agree by its subcontract with Contractor for performance of the Work and each Vendor to agree by its agreement or purchase order with Contractor for materials, supplies, equipment, and/or related services for the Work, that it will make no claim or claims against the Property, Project, Owner (or any party affiliated or associated with Owner or any assets of Owner), or Owner's Lenders for damages or losses incurred as a result of or arising out of Delays in the Work, including, but not limited to, any Excusable Delays (as defined in *Section 13.7* of this Agreement). Lost time from any Excusable Delays in the Work, if claimed by the Contractor and approved by Owner

in accordance with this Agreement, solely and completely will be compensated and balanced by an extension of the Scheduled Completion Date. The Contractor and each Subcontractor and Vendor shall accept any such extensions at no additional cost to Owner, and waive and relinquish any right to payments of any kind for any Delays in the Work, including, without limitation, for any Excusable Delays.

4.2.5 To the extent Contractor or any Subcontractor is delayed at any time in the progress of the Work by an Excusable Delay, then the Scheduled Completion Date shall be reasonably extended by Change Order in accordance with the procedures described this *Section 4.2.5* and in *Article 3*.

4.2.5.1 Notwithstanding any other provision of the Contract Documents, any item that cannot be demonstrated as being on or affecting the critical path of the Work shall not result in an extension of time to perform the Work in the event such item is delayed. Further, to the extent any Delay in the Work could have been prevented or reduced if Contractor had, with diligence and due care and its best skill and attention consistent with the terms of the Contract Documents, performed its duties and responsibilities under the Contract Documents, such delay will not entitle Contractor to an extension of the Scheduled Completion Date (except for that portion, if any, of such Delay in the Work which could not have been reduced consistent with the foregoing, and subject to the other requirements of the Contract Documents, including this *Section 4.2.5*).

4.2.5.2 Extensions of the Scheduled Completion Date for the Work will be authorized by Owner only if (a) Contractor has been necessarily delayed in meeting such Scheduled Completion Date by a cause which constitutes an Excusable Delay; (b) the completion of the Work by the Scheduled Completion Date is actually and necessarily delayed by such cause; (c) the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay, and (d) Contractor has met any notice requirements set forth in this Agreement and the other Contract Documents for it to be entitled to any extension of time. All extensions of time to which Contractor is entitled hereunder will be acknowledged by Change Order.

4.2.5.3 The period of any extension of time for delay shall be only that which is necessary to make up the time actually lost for a Work item or items specifically identifiable on the Project Design and Construction Schedule as being on or affecting the critical path of the Work at the time in which the delay occurs.

4.2.5.4 Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently but only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce

such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of Contractor or Subcontractor or for which Contractor or Subcontractor is responsible, and would of itself, irrespective of the concurrent causes, have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. Further all such extensions shall be netted out with any reductions in the Scheduled Completion Date, before implementing any such extension or increase pursuant to a Change Order.

4.2.5.5 It shall in all cases be presumed that no extension, or further extension, of time is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Owner and a Change Order is entered into pursuant to *Article 3* of this Agreement. Contractor shall maintain adequate records supporting any claim for an extension of the Scheduled Completion Date.

5. OBLIGATIONS OF CONTRACTOR.

5.1 Project Staffing. Contractor shall provide at all times a sufficient and competent organization (duly licensed, registered, trained and/or qualified to the extent required under applicable laws), which shall include, but not be limited to, Project Architect, Project Manager, Superintendent, Project Coordinator, Formwork Superintendent, foremen, engineers, detailers and inspectors, flagmen, skilled and common laborers, and such other personnel as may be necessary or desirable to prosecute and achieve Completion of the Work properly and expeditiously within the time periods required under this Agreement.

5.2 Design Services. Contractor shall timely procure, furnish, coordinate, monitor, manage, and supply (as applicable) and pay (except Owner shall pay for the services of Owner's consultants) for all Design Services (as defined in *Section 1.3* of the Agreement) for the Project and shall obtain and pay for all permits necessary for the Project; *provided,* however, that Owner, directly or through consultants, shall pay for the general building permit and plan check fees for the Project. Contractor will cause Project Architect to prepare (and cause to be prepared) and to coordinate, monitor, manage, finalize and assemble, as applicable, all Plans and Specifications for the Project which (a) shall be satisfactory to Owner in its sole and absolute discretion, and (b) shall conform to the Contract Documents. The Contract Sum is based on, and the Plans and Specifications shall substantially conform to, the "**Project Design Criteria and Drawings**," as described on *Exhibit B* attached hereto.

5.2.1 Prior to the submission of the Plans and Specifications to Owner and Owner's Lenders for approval, and in strict accordance with the Project Design and Construction Schedule, Contractor will cause Project Architect (i) to review with Owner the requirements for the Project, including the Project Design Criteria and Drawings, and arrive at a mutual understanding of such requirements with Owner, and (ii) based on the Project Design Criteria and Drawings and such mutual understanding, to prepare outline specifications and other documents fixing and describing the size and character of the Project as to architectural and structural systems, materials, and such other appropriate elements (including, without limitation, the architectural and structural drawings and specifications to be incorporated into the Plans and Specifications), to cooperate with any consultants of Owner, and to coordinate, monitor, and manage the services of such consultants in order to cause such consultants' drawings and specifications (including, without limitation, civil, mechanical, plumbing, electrical, grading, utility, security and low voltage drawings and specifications) to be timely furnished, completed and finalized in accordance with the Project Design and Construction Schedule for incorporation by Project Architect into the Plans and Specifications. The documents, specifications and drawings referred to in clause (ii) above as prepared by and/or incorporated by Project Architect shall be referred to as the "construction documents" and shall be submitted by Contractor to Owner for Owner's prior written approval in three stages in accordance with the Project Design and Construction Schedule: first, when such construction documents are fifty percent (50%) complete; second, when such construction documents are ninety percent (90%) complete; and third, when such construction documents are one hundred percent (100%) complete).

5.2.2 The one hundred percent (100%) complete and Owner-approved construction documents shall form the Plans and Specifications, which shall set forth in detail all the requirements for the construction of the Project in compliance with all Governmental Requirements and consistent with commonly accepted, good and sound architectural and engineering practices and procedures. Owner shall have the right in its sole and absolute discretion to approve or reject the Plans and Specifications and any amendments, modifications or supplements thereto, and, in the event of any such rejection, Contractor shall

cause Project Architect to modify such Plans and Specifications, or any portion thereof, to the sole satisfaction of Owner.

5.2.3 Upon the approval of the Plans and Specifications by Owner and Owner's Lenders (including any later approval by Owner and Owner's Lenders of any amendments, modifications, and or supplements thereto), Contractor shall cause Project Architect to make written certifications to Owner (and Owner's Lenders) that the Plans and Specifications (and such amendments, modifications and/or supplements thereto) have been approved by the officer or officers of the governmental agencies or other parties having jurisdiction over the issuance of, and who have issued, all requisite grading, building and other permits, certifications, consents and/or licenses enabling construction of the Project in accordance with the Plans and Specifications (including any amendments, modifications and/or supplements thereto).

5.2.4 Contractor shall be solely responsible for paying Project Architect. Contractor shall require and ensure that Project Architect complies with all Governmental Requirements and all other applicable requirements set forth in the Contract Documents. Contractor shall be responsible to Owner for any acts and/or omissions of Project Architect and/or its respective agents and employees relating to the Project, and Contractor shall defend, hold harmless and indemnify any Indemnitee (as defined in *Section 11.1* of this Agreement), from and against any and all loss, liability, costs, damages, claims or causes of action, including, without limitation, attorneys' fees, costs and expenses, which may arise or be incurred by any Indemnitee (as defined in *Section 11.1* of this Agreement) by reason of any acts and/or omissions of Project Architect and/or its respective agents and employees performing Work relating to the Project.

5.2.5 Nothing contained in this Agreement or the other Contract Documents shall create any professional obligations or contractual relationship between Owner and Project Architect, and Owner shall have no obligation to directly pay Project Architect for any Design Services or

other Work performed in connection with the Project. Owner shall be responsible for paying any consultants hired by Owner to provide civil, mechanical, plumbing, electrical, grading, utility, security and low voltage drawings and specifications for the Project.

5.3 General Supervision of Construction. The individuals who shall be responsible on behalf of Contractor for supervising the Project are Steve Smith ("**Project Manager**"), Greg Willson ("**Superintendent**"), Dana De Felice ("**Project Coordinator**"), and Andre Walters ("**Formwork Superintendent**"). Except for reasons beyond its control, Contractor shall not change the individuals serving as the Project Manager, Superintendent, Project Coordinator or Formwork Superintendent during the term of this Agreement without the prior written approval or direction of Owner. The Superintendent shall be at the Property on a full-time basis and at all times while any Work is being performed. The Project Manager and Project Coordinator shall spend such time at the Property as is necessary or desirable to so supervise and direct the Work along with the Superintendent. Subject to *Article 7* of this Agreement, Contractor shall be solely responsible for all construction performed pursuant to the Contract Documents, including, without limitation, the coordination and implementation of all techniques, procedures and sequences with respect to the Work.

5.3.1 Unless otherwise provided in the Contract Documents, Contractor shall provide, furnish, supply and pay for all labor, materials, tools, supplies, equipment, machinery, water, utilities, transportation, and all other facilities and services (whether temporary or permanent and whether or not incorporated into the Work) necessary or desirable for proper execution and timely completion of the Work.

5.3.2 Contractor shall: (i) obtain all permits, including, without limitation, all trade permits, and all governmental approvals, licenses, and inspections necessary for the proper and timely execution and completion of the Work and shall pay all costs and/or fees for obtaining the same, except that Owner, directly or through consultants, shall be responsible for paying for the general building permit for the Project and all plan check fees, (ii) procure, maintain, and provide to Owner copies (or originals if requested by Owner) of all certificates of inspection, authorizations, bonds, permits and licenses, and pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work and as required by any Governmental Requirements and/or any governmental authority or other party having jurisdiction over the whole or any part of the Work, and (iii) fully comply with all Contract Documents in the performance of the Work or any part of or event relating to the Work.

5.3.3 Contractor shall inspect and keep reasonable records of all materials and labor entering into the Work or on the Property.

5.3.4 Contractor shall supervise and direct all such construction work in accordance with the highest standard for construction in Las Vegas, Nevada.

5.3.5 Contractor shall be responsible to Owner for all acts and/or omissions of Contractor's employees and agents, Subcontractors and Vendors, and Contractor shall defend, hold harmless and indemnify any Indemnitee (as defined in *Section 11.1* of this Agreement) from and against any and all loss, liability, costs, damages, claims or causes of action, including, without limitation, attorneys' fees, costs and expenses, which may arise or be incurred by any Indemnitee by reason of any acts and/or omissions of Contractor's employees and agents, Subcontractors and/or Vendors or of any person for which any of the foregoing may be responsible or liable.

5.3.6 Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of Owner or Owner's Lenders, by any request, approval or consent of Owner, or by tests, inspections or approvals required or performed by persons other than Contractor.

5.3.7 Contractor shall require and ensure that each Subcontractor and Vendor comply with all applicable requirements set forth in the Contract Documents for Contractor.

5.3.8 At all times during performance of the Work on the Project, including, without limitation, during any partial use or occupancy of the Project by Owner or others, Contractor shall not use (and shall ensure that its Subcontractors, Vendors and any other persons performing Work on the Project do not use) Owner's toilet facilities and the Project's permanent toilet facilities. Contractor also shall perform (and shall cause its Subcontractors and Vendors to perform) all Work on the Project so as to cause the least inconvenience and disruption to Owner's business which may require performance of Work at hours when Owner's business is least active.

5.3.9 Except to the extent the Contract Documents expressly provide otherwise, if any dispute arises between Owner and Contractor, Contractor shall proceed with the performance of its obligations under the Contract with reservation of all rights and remedies it may have under the Contract unless the Contract is terminated by Owner. Notwithstanding any provision of this Contract or the other Contract Documents to the contrary, during the pendency of any dispute, action or proceeding (including in respect of any Change Order) between Contractor and Owner, so long as Owner continues to pay all undisputed amounts hereunder, Contractor shall continue to perform the Work diligently and in accordance with the Contract so as to complete the Work on or before the Scheduled Completion Date.

Notwithstanding any provision to the contrary herein or in the other Contract Documents, Contractor shall not be relieved of any of its obligations hereunder unless and to the extent of a final judgment resolving any such dispute, action or proceeding. Contractor recognizes and acknowledges that the provisions of this Section and the Completion of the Work on a timely basis notwithstanding any dispute, action or proceeding are fundamental to the contractual relationship established pursuant to this Contract, shall be specifically enforceable, and that Owner would not have entered into this Contract but for Contractor's agreement set forth herein. Contractor acknowledges that it understands and has duly considered and consulted with counsel concerning the significance of this provision.

5.4 Site Meetings and Visits by Owner. Contractor shall hold weekly meetings (or more frequently if necessary or desirable) at the Property for the Project with some or all of the following: Owner, Other Builders, and Subcontractors and Vendors, as required, to resolve any outstanding issues, to clarify requests for additional information and to discuss the progress of the Work. Contractor shall be responsible for securing attendance of its Subcontractors, Vendors and other personnel at such meetings. Unless otherwise directed by Owner, Contractor shall be responsible for the meeting minutes. Meeting minutes shall be in writing and distributed in a timely fashion so that they can be received and reviewed by all recipients prior to the next meeting. Owner, Owner's Lenders, Other Builders and any other party designated in writing by Owner shall have complete and unfettered access to the Property, the Project and the Work at all times. Contractor shall, at all times, provide Owner, Owner's Lenders, Other Builders and Owner's other

representatives and contractors access to the Work in preparation and progress wherever located. Visits to the Property or observations of the Work by Owner, Owner's Lenders, Other Builders, or any party designated by Owner or Owner's other representatives, shall in no way relieve Contractor from its obligations to carry out the Work in accordance with the Contract Documents.

5.5 Independence of Contractor; Taxes. Contractor is an independent contractor and shall pay all federal and state taxes and contributions for Social Security, unemployment insurance and income withholding tax and other taxes that are measured by wages paid to Contractor's employees, as well as all sales, consumer, employment, use and similar taxes for the Work or portions of the Work provided by or through Contractor or any Subcontractor or Vendor or relating to their operations or property. Nothing contained in the Contract Documents or otherwise shall be deemed or construed to (i) make Contractor the agent, representative, servant or employee of Owner, or (ii) create any partnership, joint venture, or other association or relationship between Owner and Contractor. Any approval, review, inspection, direction or instruction by Owner or any party on behalf of Owner in respect to the Work or services of Contractor shall relate to the results Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status or obligation to perform the Work in accordance with the Contract Documents.

5.6 Clean-up and Other Duties.

5.6.1 Contractor shall maintain sufficient labor, and appropriate tools and materials, including, but not limited to, dumpsters, at the Property for the Project, and shall at all times keep the Work, the Project and the Property free from accumulation of waste materials, rubbish, dirt, debris and dust. Contractor shall maintain streets leading to the Project and used as a means of ingress or egress in a clean condition, and shall remove from these areas spillage and tracking arising from the performance of the Work, and shall promptly repair any damage to same. Contractor shall minimize the impact and effect of the Work on properties adjoining and nearby the Property, and shall take all necessary or desirable precautions to prevent any debris including, but not limited to, fugitive dust, from entering or interfering with any adjacent or nearby property.

5.6.2 Upon Substantial Completion of the Work, Contractor shall in accordance with Governmental Requirements: (i) remove all debris, rubbish, unused materials, tools, construction equipment and machinery from the Property, and (ii) leave the Property and improvements in a neat, clean and broom-clean condition.

5.6.3 If Contractor fails to clean up as provided in the Contract Documents, Owner may do so and upon written notice to Contractor charge the cost to Contractor.

5.6.4 Contractor shall not directly contact or communicate with any neighbor or resident in the vicinity of the Project, but shall promptly forward to Owner all communications from or relating to any such person.

5.7 Secure Project/Security/Safety of Personnel.

5.7.1 Contractor shall secure, protect, and be responsible for the safety of the Work, materials, supplies, tools and equipment and all other improvements and personal property for the Project, whether or not incorporated into the Work or located at the Property. Contractor shall bear the cost of, and be liable for, and promptly shall remedy, all loss and damage to any of them from any cause whatsoever (even if not covered by Contractor's insurance), except loss or damage caused solely by Owner's gross negligence or willful misconduct. Owner will not in any manner be responsible for any such loss or damage (or for the cost of insurance against such loss or damage), except loss or damage caused solely by Owner's gross negligence or willful misconduct.

5.7.2 Contractor shall provide all necessary or desirable measures for security at and on the portion of the Property where the Work is being performed in connection with the Project, including, but not limited to, fences, gates, cameras, and patrols. Without limiting any of Contractor's obligations herein or under the Contract, Owner may elect to provide and/or maintain security of its own choosing for the whole or portions of the Work and/or the Property and/or adjacent property, but Owner shall not have any obligation to do so and shall not have any responsibility or liability of any kind to any party or person relating to Owner's obtaining or failing to obtain any security for the Property.

5.7.3 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and without limiting the foregoing, shall take all reasonable precautions for the safety of, and shall provide for all reasonable protections to prevent injury to, any of its employees, Project Architect, Subcontractors, Vendors, and all other persons (including, without limitation, Owner, Owner's Lenders, and Other Builders) on the portion of the Property where the Work is being performed in connection with the Project or adjacent to or nearby the same. In connection with the Work, Contractor shall give any required notices and otherwise comply with Governmental Requirements bearing on the safety of persons or property or their protection from damage, injury or loss. Contractor shall also, and shall cause all Subcontractors and Vendors to, comply with Owner's "**Project Construction Safety and Health Guidelines"** in the form attached hereto as *Exhibit J*.

5.8 Statement of Claims. Whenever requested by Owner, Contractor shall certify to Owner in writing (in a form satisfactory to Owner) the amounts then claimed by and/or due and owing from Contractor to any person(s) for labor and services performed and materials and supplies furnished relating to the Work, setting forth the names and addresses of the persons whose charges or claims for materials, supplies, labor, or services have been paid and whose charges or claims are unpaid or in dispute, and the amount due to or claimed by each respectively.

5.9 Mechanic's Liens; Stop Notices. If any mechanics', materialmen's or other liens or stop notice claims (other than a lien or stop notice which is the result solely of Owner's failure to issue

payment to Contractor in breach of this Agreement) are filed by anyone in relation to the labor, services, materials or supplies rendered or supplied to the Work, Contractor, at its sole cost and expense, shall obtain a bond in an amount and with a bonding company satisfactory to Owner in Owner's and Owner's Lenders' sole and absolute discretion, and file with the appropriate court a petition to substitute the bond for such lien or claim within five (5) working days after receipt of notice thereof (or such lesser period in any loan documents relating to Owner's Lenders), and obtain a court order within

thirty (30) calendar days after filing such petition, allowing substitution of the bond for such lien or claim. Owner shall have the right to withhold an amount equal to twice the sum of all such liens and claims from amounts otherwise payable by Owner to Contractor under the Contract, regardless of whether the 30-calendar day period has expired. Owner shall give Contractor prior written notice of any such withholding. If Contractor fails to have such lien or claim discharged as described above, Owner may (but shall have no obligation to) cause such liens and claims to be discharged and the expense of discharging, including, without limitation, any payment by Owner, the amount of any obligation assumed by Owner by bond, indemnity, or otherwise, as well as Owner's attorneys' fees and costs in connection therewith, shall promptly be repaid to Owner by Contractor with interest thereon per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date such expenses, fees or costs were incurred by Owner until the date repaid by Contractor.

5.10 Contractor's Familiarity.

5.10.1 Execution of this Agreement by Contractor is Contractor's representation and warranty to Owner that the Contract Documents that exist as of the Effective Date (including, without limitation, the Project Design Criteria and Drawings) are, and the Contract Documents that will be prepared in accordance with the terms of this Agreement will be, full and complete, and that the same are now sufficient to enable Contractor to determine the Contract Sum, to provide the Design Services, to complete the Plans and Specifications, to construct the Work in accordance with the Contract, and otherwise timely to fulfill all of its obligations under the Contract, including, but not limited to, Contractor's obligation to complete the Work for an amount not in excess of the Contract Sum on or before the Scheduled Completion Date. Contractor further represents and warrants to Owner that Contractor: (i) is highly experienced with construction projects substantially similar to the Work, (ii) has had ample time to familiarize itself with, and has fully reviewed and familiarized itself with (and will continue to review and familiarize itself with) (a) the Contract Documents, including, without limitation, the Project Design Criteria and Drawings, (b) the Governmental Requirements, and (c) the Technical Studies and Reports, and (iii) has visited and examined the Property (and will continue to do so), has investigated all physical, legal, and other conditions affecting the Work, and fully is familiar with all of the conditions on, under, about and affecting the portion of the Property on which the Work will be performed in connection with the Project.

5.10.2 Contractor has taken (and will continue to take) field measurements and verified (and will continue to verify) field conditions, and carefully compared such field measurements and conditions and other information known to Contractor with the Contract Documents and has not found any omissions, errors or discrepancies. Contractor's duty to carefully study and compare Contract Documents with each other and with field measurements and report to Owner, in writing, any errors, inconsistencies, discrepancies, ambiguities, conflicts or omissions is ongoing and extends for the full term of the Work, and Contractor shall not proceed on that portion of the Work where any such errors, omissions, inconsistencies, ambiguities, discrepancies, or conflicts are found without prior written instruction from Owner.

5.10.3 Without limiting the generality of the foregoing, Contractor specifically represents and warrants to Owner that it has satisfied itself as to: (1) the nature, location, and character

of the Work and the portion of the Property on which the Work will be performed in connection with the Project, including, without limitation, all improvements and obstructions on and under such portion of the Property, both natural and man-made; (2) the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to achieve Completion of the Work pursuant to and in accordance with the Contract and for no greater than the Contract Sum and by the Scheduled Completion Date.

5.10.4 In connection with the foregoing, Contractor represents and warrants to Owner that it (i) has determined the Contract Sum with respect to all of the foregoing, and (ii) has no knowledge of any errors, inconsistencies, discrepancies, omissions, ambiguities, or conflicts in any or all of, or between or among any of the Contract Documents, and that if it becomes aware of any such errors, inconsistencies, discrepancies, omissions, ambiguities, or conflicts, it promptly will notify Owner in writing and take appropriate steps (with the prior written approval of Owner) to address the same.

5.10.5 Further articulation of the Contract Documents shall not be the basis for any change to the Contract Sum or Scheduled Completion Date. If Contractor encounters any unforeseen conditions during the course of the Work, it shall promptly notify Owner in writing and Changes in the Work, if any, shall be made by Change Order. Any conditions that Contractor reasonably should have foreseen given Contractor's status as a Contractor experienced with Construction projects of similar size and complexity as the Work and Contractor's review of the Property, the Contract Documents, the Technical Studies and Reports, shall not be a basis for an increase in the Contract Sum or extension of the Scheduled Completion Date. The failure of the Contractor fully to acquaint itself with any provision of the Contract Documents or other matter shall not in any way relieve it from responsibility for performing the Work in accordance with the Contract Documents, and for the Contract Sum and by the Scheduled Completion Date.

5.10.6 Neither Owner nor any person on behalf of Owner has made representations or warranties, oral or written, to Contractor or any of its agents with respect to the conditions of the Property or improvements thereon, or regarding the completeness, correctness, or adequacy of any Technical Studies and Reports or Contract Documents.

5.11 Record Drawings. At Substantial Completion of the Work and as a condition precedent to Final Payment, Contractor shall furnish to Owner record (i.e., "**as built**") drawings showing the effect of Change Orders and Construction Change Directives, any Change in the Work not authorized by Change Order or Construction Change Directive, general construction, mechanical, electrical, and all other Work, and indicating the Work as actually completed and installed. These as-built drawings shall consist of carefully drawn markings on a set of reproducible mylar of the Plans and Specifications (and electronically when available). Contractor shall maintain at the Property one current record copy of the Plans and Specifications, Change Orders, Construction Change Directives, approved Submittals and other modifications, in good order and marked to record changes and selections made during construction.

5.12 Shop Drawings. Contractor shall prepare or cause to be prepared and review, approve and submit to Owner shop drawings, product data, samples and similar submittals ("**Submittals**") required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or Other Builders at the Property. Submittals made by Contractor which are not required by the Contract

Documents and/or are not submitted in compliance with the Contract Documents may be returned without action. Contractor shall perform no portion of the Work requiring a Submittal unless such Submittal has been approved in

writing by Owner. Such Work shall be in accordance with the Submittals as approved by Owner. In submitting shop drawings, product data, samples and similar Submittals, Contractor represents and warrants that it has determined and verified materials, field measurements and field construction criteria related to them, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by any approval by Owner of any Submittal unless Contractor has specifically informed Owner in writing of such deviation at the time of the Submittal, and Owner has given prior written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar Submittals by reason of any approval by Owner.

5.13 Subcontractors.

5.13.1 Contractor hereby represents and warrants that it is (and will at all times while performing Work be) licensed and qualified to act in the capacity of a general contractor under the laws of the State of Nevada in connection with the Project and that it will contract with all Subcontractors as are necessary for Completion of the Work and that all Subcontractors will be properly licensed and qualified to act in the capacity of subcontractors under the laws of the State of Nevada at all times while performing Work in connection with the Project. Contractor shall furnish to Owner in writing, for prior written acceptance by Owner prior to the date on which Contractor awards or executes any subcontracts, the names of qualified, responsible, and reputable Subcontractors proposed for the principal portions of the Work. Contractor shall not contract with any Subcontractor if such Subcontractor is or has been rejected by Owner. Contractor shall not be required to contract with any Subcontractor against whom it has a reasonable objection. Contractor shall not make any substitution for any Subcontractor that has been accepted by Owner in writing, unless such substitution is first accepted by Owner in writing. At the request of Owner, Contractor shall provide copies of the licenses for Contractor and any Subcontractor to Owner. Contractor shall not permit any Subcontractor to perform Work on the Project without first obtaining a copy of such Subcontractor's valid license to perform such Work.

5.13.2 All Work performed for or on behalf of Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and such Subcontractor (and where appropriate, between Subcontractors and their Subcontractors and/or Vendors) which shall contain provisions that: (i) preserve and protect the rights of Owner under the Contract with respect to the Work to be performed under the subcontract, so that the subcontracting of the Work shall not prejudice such rights and shall require that such Work be performed in accordance with the requirements of the Plans and Specifications and other Contract Documents and for the provision of information for Contractor to comply with its obligations under the Contract; and (ii) require that the subcontract and any purchase orders may not be assigned by Subcontractor or any Vendor but permit the assignment of the subcontract and any purchase orders by Contractor to Owner or a third party designated by Owner, including Owner's Lenders, and such assignees shall have the right to enforce such subcontracts and purchase orders.

5.13.3 All subcontract agreements shall conform to the requirements of the Contract Documents. Contractor shall not waive or fail to exercise any material or significant right or remedy under any subcontract or waive any material or significant default under any subcontract without Owner's prior written approval. Contractor shall direct and supervise each Subcontractor fully and shall have full and complete authority with respect to such direction and supervision subject to the terms of the Contract Documents. Notwithstanding the exercise of any of Owner's rights of approval or disapproval in the subcontracting process or the

process of managing subcontracts, Contractor shall be responsible and liable to Owner for all acts and/or omissions of Subcontractors and/or Vendors.

5.13.4 Contractor hereby assigns to Owner all its interest in all subcontract agreements and purchase orders now existing or hereafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in said writing. Such assignment may not be withdrawn by Contractor prior to the end of the Warranty Period (as defined in *Section 12.2* of this Agreement), and Owner may accept said assignment at any time prior to the end of the Warranty Period. Upon such acceptance by Owner: (i) Contractor shall promptly furnish to Owner the originals of the designated subcontract agreements and purchase orders, and (ii) Owner shall be required to compensate the designated Subcontractor(s) or Vendor(s) only for compensation accruing to same for Work done or materials delivered from and after the date as of which Owner accepts in writing assignment of such subcontract agreement(s) or purchase order(s). All sums due and owing by Contractor to the designated Subcontractor(s) or Vendor(s) for work performed or material supplied prior to the date as of which Owner accepts in writing assignment of the subcontract agreement(s) or purchase order(s), and all other obligations of Contractor accruing prior to Owner's written acceptance of such assignment, shall constitute a debt and an obligation solely between such Subcontractor(s) or Vendor(s) and Contractor, and Owner shall have no liability with respect to such sums or any other obligations of Contractor.

5.14 Cooperation.

5.14.1 Contractor acknowledges that a portion of the Project will attach to and/or be joined into the Casino Improvements. Accordingly, in connection with the Work on the Project, Contractor shall cooperate fully with Owner and Other Builders of the Casino Improvements and shall schedule, coordinate and sequence its Work with that of Owner and the Other Builders in order to minimize the (i) cost of the work for Owner and such Other Builders and (ii) the time needed to achieve Substantial Completion of the Work. Upon Owner's request, Contractor shall at all times provide the Other Builders with access to the Work in preparation and progress wherever located and with any and all information concerning the Project and its progress, including, without limitation, the Project Design and Construction Schedule and the Plans and Specifications (as the same may be amended from time to time), especially as they relate to the portions of the Work that will be attached to and/or joined into the Casino Improvements. Contractor further shall afford the Other Builders a reasonable opportunity for the introduction and storage of their materials and

equipment on the portion of the Property relating to the Project and shall permit the execution of their work on the portion of the Property relating to the Project, and Contractor shall connect its Work with theirs as and when required under the Contract Documents. If any part of Contractor's Work depends in part for proper execution or results upon the work of the Other Builders (or vice versa), Contractor shall, prior to proceeding with such Work, promptly report in writing to Owner any apparent discrepancies or defects in such other work or activities that would render it unsuitable for proper execution or results or incompatible with Contractor's Work. Failure of Contractor to do so shall constitute an acknowledgement and agreement by Contractor that the Other Builders' completed or partially completed work is fit and proper to receive Contractor's Work and such construction and/or activity is fully compatible with Contractor's Work. Should Contractor or its Subcontractors, Vendors or any other person performing Work for or on behalf of Contractor on the Project cause any damage or loss to the work of the Other Builders, Contractor shall promptly remedy such damage or loss. Owner also shall require the Other Builders promptly to remedy any damage or loss to the Work of the Contractor caused by such Other Builders or their subcontractors or any other person performing work on the Casino Improvements for or on behalf of such

Other Builders. Notwithstanding the foregoing, any costs caused by defective work shall be borne by the party responsible therefor.

5.14.2 Contractor and its Subcontractors and Vendors shall use all best efforts to work without causing labor disharmony, coordination difficulties, delays, disruptions, impairment of guarantees or interferences of any other obligations of any of Owner's other contractors, engineers, inspectors and consultants, including, without limitation, Other Builders.

5.14.3 Contractor will not engage in, nor commit its personnel to engage in, any other projects while performing Work on the Project to any extent that such other projects may materially and adversely affect the quality or efficiency of the Work required to be performed by Contractor in connection with this Project or which will otherwise be detrimental to the carrying on and completion of this Project.

6. RIGHTS OF CONTRACTOR.

6.1 General Authority and Powers. Subject to the provisions of this Agreement and the other Contract Documents, Contractor shall have full power and authority to:

6.1.1 Specify all techniques and sequences of construction, furnish and select all labor, construction equipment, tools, machinery, and all other facilities and services appropriate, necessary or desirable for the proper completion of the Work, and to execute and deliver contracts and agreements with Subcontractors and Vendors (subject to Owner's prior written approval to the extent required by this Agreement) for the performance or provision of every service or supply deemed by Contractor to be necessary or appropriate for the construction of the Work in accordance with the Contract Documents.

6.1.2 Dismiss Subcontractors, Vendors and employees of Contractor who, in Contractor's reasonable opinion, are not properly performing the tasks which shall have been assigned to them.

6.1.3 Perform, supervise, or direct any and all other tasks which Contractor shall reasonably deem to be necessary or appropriate to facilitate the construction of the Work in accordance with the Contract Documents.

Notwithstanding any other provision of the Contract, including, but not limited to, this *Article 6*, Contractor and its Subcontractors and Vendors shall access the Project and confine all activities and Work on the Project to the areas as directed by Owner.

6.2 Selection of Materials; Variation from Plans. Unless otherwise specified or provided for in the Contract Documents or in any written notice from Owner (which shall thereafter become part of the Contract Documents to the extent expressly so provided in such written notice), Contractor shall select all materials, appliances, mechanical devices, supplies and equipment to be incorporated into the Work. Contractor shall promptly notify Owner in writing if any items in the Contract Documents shall not be readily available, and Owner shall have the right (but not the obligation) to designate an available substitute item pursuant to Change Order. Nothing in this *Section 6.2* or elsewhere in this Agreement shall derogate from Contractor's responsibility to select, order, and timely purchase such items. If Contractor does not timely order or arrange for delivery of items or materials required for the Work, Owner may (but is not obligated to) arrange for delivery or order such items and materials and in such event the Contract Sum shall be reduced by the cost of such items and materials arranged for or ordered by Owner.

7. RIGHTS OF OWNER.

7.1 Generally. Solely Todd Nisbet and Darrell Richards shall have the authority to act on behalf of Owner under this Agreement, subject to Owner's right to withdraw, substitute or replace Todd Nisbet and/or Darrell Richards, with notice to Contractor. Contractor shall take direction

and instruction from Todd Nisbet or Darrell Richards on behalf of Owner, with regard to the Property, Work and Project. Notwithstanding any provision in this Agreement to the contrary, Owner shall have the right to require Contractor to remove any employee of Contractor (including, without limitation, the Project Manager, Superintendent, Project Coordinator and/or Formwork Superintendent) from the Project and to terminate any Subcontractor and/or Vendor whose work is not deemed satisfactory by Owner, who is abusive of Owner's property, who employs vile language, who is disorderly, or as to whom Owner has any other reasonable objection.

7.2 Partial Occupancy Or Use. Owner may occupy or use any completed or partially completed portion of the Work at any stage, including opening portions of the Project to the public. Notwithstanding any other provision of the Contract, any such partial occupancy or use shall not: (i) constitute final acceptance of any Work, (ii) relieve Contractor of responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities under the Contract Documents, (iii) commence any warranty period under the Contract Documents (provided Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy), or (iv) entitle Contractor to any Retainage. Contractor and Owner shall cooperate in all aspects of Owner's partial use and occupancy of the Work and Project, including, without limitation, scheduling, allocation of costs of utilities, access and storage, any cost impacts as may mutually be agreed upon between Owner and Contractor, and all other arrangements. Unless and until Owner issues a Certificate of Substantial Completion pursuant

to *Section 13.9* of this Agreement for such portion of the Work partially occupied or used by Owner, Owner shall not be obligated to pay Retainage relating to such portion of the Work at that time partially used or occupied by Owner, and it is the express intent of Contractor and Owner that Contractor waive the benefits of Section 624.620 of the Nevada Revised Statutes.

7.3 Ownership, License and Use of Project Architect's Drawings, Specifications and Other Documents. While Project Architect shall maintain ownership of that portion of the Plans and Specifications prepared by Project Architect, Contractor shall, and shall cause Project Architect and all other applicable persons performing any of the Design Services to, transfer to Owner without reservation the copyright and all related common law and statutory rights (federal and state) with regard to all documents, drawings, specifications, electronic data and information, including, without limitation, the Plans and Specifications (and all amendments, modifications or supplements thereto), prepared, provided and/or procured by Contractor, Project Architect, or any other applicable persons performing Work in connection with the Design Services (the "Design-Build Documents"). The foregoing transfer shall be effective on the date upon which Owner has paid in aggregate to Contractor (for Design Services) at least $612,000.00 of the Contract Sum. From and after the date of this Agreement and until such time as the transfer of such copyright and other rights to Owner is effective, Contractor hereby grants (and has caused or will cause Project Architect and any other necessary persons to grant) to Owner an exclusive, irrevocable perpetual license to use, distribute, display, reproduce and make derivatives of each and all of the Design-Build Documents for all uses relating to the Project, including, but not limited to, to copy and distribute the Design-Build Documents to any persons necessary for the construction and completion of the Project, including, without limitation, to those governmental authorities or other persons having approval rights over the Project. The foregoing license shall be effective upon the date of this Agreement, shall survive any termination of this Agreement and shall only terminate upon the transfer to Owner of the copyright in the Design-Build Documents as provided in this *Section 7.3*. The parties to this Agreement further hereby acknowledge and agree that at all times, regardless of any termination of this Agreement or any termination of any license granted hereunder, the Design-Build Documents, and any derivative thereof, shall be for use solely with respect to the Work and the Project. Contractor shall not use (or allow Project Architect, any Subcontractor or Vendor or any other person to use) the Design-Build Documents, or any

derivative thereof, on any other projects or for any other purpose without the prior written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Contractor further shall take all reasonable precautions to protect and shall not publish, reproduce, display, duplicate, distribute or circulate copies (or allow Project Architect, any Subcontractor or Vendor or any other person to do so) of the Design-Build Documents except as required under this Agreement.

7.4 Owner's Right to Award Separate Contracts. Owner reserves the right to award separate contracts to persons other than Contractor (including, but not limited to, Other Builders) or to use its own forces to perform work or other activities on the Project (including, without limitation, pursuant to *Article 3* and *Sections 8.3 and 8.5* of this Agreement or otherwise) or on the Property.

8. CONTRACTOR'S DEFAULTS AND OWNER'S REMEDIES.

8.1 Contractor's Defaults. Each of the following occurrences is a default of Contractor under the Contract:

8.1.1 The failure of Contractor to perform the Work in a diligent, expeditious, workmanlike and careful manner strictly in accordance with the Contract, including, but not limited to, in compliance with all Governmental Requirements, or any other failure of Contractor to comply with the Contract or to perform any material obligations under the Contract (including, without limitation, the failure of Contractor to pay timely Subcontractors and Vendors for Work performed or material supplied for the Project or the failure of Contractor to achieve Substantial Completion of the Work or Completion of the Work within the time periods prescribed by *Section 4.2.1* of this Agreement), unless Contractor takes and completes corrective action satisfactory to Owner, in Owner's sole and absolute discretion, with respect to any such failure within five (5) calendar days following written notice from Owner specifying the failure or other default (unless a different, specific time period for Contractor's performance is set forth in this Agreement, in which case Contractor shall have such specified period in lieu of such five (5)-calendar day period within which to take and complete corrective action); *provided, however,* that if the nature of Contractor's failure or default (excluding any failure to pay Subcontractors or Vendors, any failure to achieve Substantial Completion of the Work or Completion of the Work within the time periods prescribed by *Section 4.2.1* of this Agreement, and any failure or default of the type referred to in *Sections 8.1.2, 8.1.3, 8.1.4, 8.1.5 or 8.1.6* of this Agreement) is such that corrective action cannot be reasonably completed within the aforesaid five (5)-calendar day period, then Contractor shall (unless such default or failure is a second occurrence in which event Contractor shall not have any right to cure except within said five (5)-calendar day period) not be in default under this Agreement if it commences corrective action within such five (5)-calendar day period and thereafter diligently completes such corrective action within the shortest feasible time (but in no event longer than sixty (60) calendar days) and in a manner satisfactory to Owner, in Owner's sole and absolute discretion; and provided, further, that no cure period shall apply in the case of any failure or default which, by its nature, cannot be cured.

8.1.2 The making by Contractor of any general assignment for the benefit of creditors; the filing by or against Contractor of a petition to have Contractor adjudged a bankrupt or be discharged of its debts or of a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Contractor, the same is dismissed within ten (10) business days of the filing; or the appointment of a trustee or receiver to take possession of all or a significant portion of Contractor's assets.

8.1.3 The recordation of a mechanics' or materialmen's lien on the Property or the Work by a Subcontractor or Vendor or any other person performing Work relating to the Project, provided that Contractor, at its sole cost and expense, does not obtain a bond in an amount and with a bonding company satisfactory to Owner in Owner's and Owner's Lenders' sole and absolute discretion, and file with the appropriate court a petition to substitute the bond for such lien within five (5) working days after receipt of notice of such lien (or such lesser period in any loan documents relating to Owner's Lenders), and obtain a court order within thirty (30) calendar days after filing such petition, allowing substitution of the bond for such lien.

8.1.4 Failure of Contractor for three (3) successive calendar days or an aggregate of five (5) calendar days in any thirty (30) calendar day period (other than Sundays or national holidays), to have an adequate number of Subcontractors at the Property who are actively and productively working on the Project, unless Excusable Delays exist for such absence.

8.1.5 Failure of Contractor for five (5) calendar days following a request from Owner to provide Owner with evidence of satisfactory funds (and a perfected first priority lien therein) available to make up any overage with regard to the Contract Sum as required under *Section 2.2* of this Agreement.

8.1.6 Owner's good faith belief that Contractor will not complete the Work within the time periods required under the Contract Documents or within the Contract Sum.

8.2 Owner's Remedies. In the event of any default of Contractor specified under *Section 8.1* above (which is not an all-inclusive list of defaults), or any other default of or failure to perform by Contractor under the Contract, which is not cured within the express applicable time period (if any), set forth in *Sections 8.1.1 through 8.1.6* above, Owner may, without prejudice to any other rights or remedies of Owner:

8.2.1 terminate the Contract, reduce the scope of Contractor's services, or suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine by written notice specifying the effective date of such termination, reduction, suspension, delay or interruption; provided, however, the right of Owner to terminate the Contract or reduce, suspend, delay, or interrupt the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity. If Owner elects to delay, suspend or interrupt the Work or reduce the scope of Contractor's services due to a default by Contractor, Contractor shall not be entitled to any further payments under the Contract unless and until such default is cured or Owner and Contractor reach mutual agreement in writing on a resolution of such default, nor shall Contractor be entitled to the benefits under *Sections 8.3 or 8.5* of this Agreement with regard to any such termination, reduction, suspension, delay or interruption. No increase or upward adjustment shall be made in the Contract Sum for any such termination, reduction, suspension, delay or interruption, and in no event shall Owner be liable for, or shall Contractor or any Subcontractor, Vendor or any other party performing any Work on the Property be entitled to, any lost opportunity, lost profit or consequential damages claimed or alleged by Contractor, any Subcontractor, Vendor or any other party performing any Work on the Property and relating to any such termination, reduction, suspension, delay or interruption. If Owner first elects to suspend, delay or interrupt the Work, Owner also may at any time thereafter elect to terminate the Contract. Upon termination of the Contract, Owner may: (a) enter upon the Property and take possession of all materials of any kind that have been paid for, that are to be incorporated into the Work, or to which Owner has any ownership rights or interest, and finish the Work and provide the materials therefor or contract with others to do so by whatever method Owner deems expedient; (b) accept assignment of such subcontracts or purchase orders, if any, as Owner may specify in writing; and/or (c) pursue any

other rights or remedies provided for under the Contract Documents or available at law, in equity or otherwise. In case of such termination, Contractor shall not be entitled to receive any further payment unless and until the Work is finished, at which time Contractor shall be entitled, subject to the terms of the Contract Documents, to receive only such additional payments under the Contract, if any, as are provided in *Section 8.6* of this Agreement. If a court determines that reduction, suspension, delay or interruption of the Work or termination of Contractor pursuant to this *Section 8.2* was wrongful, such reduction, suspension, delay or interruption of the Work or termination will be deemed converted to a suspension, delay, interruption or termination for convenience pursuant to *Section 8.3 or 8.5*, as the case may be, of this Agreement, and Contractor's exclusive remedy for wrongful reduction, suspension, delay or interruption of the Work or termination shall be limited to the recovery of the payments required upon a termination for convenience as set forth in *Section 8.3* of this Agreement or the adjustment, if any, in the Contract Sum and/or Scheduled Completion Date required under *Section 8.5* of this Agreement, as the case may be; or

8.2.2 cure such default, and the cost of curing defaults, including, but not limited to, compensation for any additional services and any other expenses arising from or related to such default (including, but not limited to, those listed in *Section 8.6* of this Agreement) shall upon written notice to Contractor be deducted from any payments then or thereafter due to Contractor under the Contract Sum. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner upon Owner's demand and such amounts shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

8.3 Termination for Convenience. Owner, for convenience or otherwise, may terminate Contractor's services at any time upon five (5) calendar days prior written notice to Contractor. If Owner terminates Contractor's services under this *Section 8.3* (and without limitation of any of Owner's rights with respect to a default or a breach by Contractor), Owner's sole obligation and liability to Contractor shall be to reimburse Contractor (and Contractor's exclusive remedy shall be to receive reimbursement) for (i) the Cost of the Work incurred (and not cancelable or refundable) by Contractor for Work properly performed by Contractor up to the date of termination and approved by Owner in accordance with the Contract, but not in excess of the portion of the Contract Sum equitably allocable to such Work (and less the portion of the Contractor's fee to be paid pursuant to clause (ii) below) based on the value the percentage of such properly performed and completed Work by Contractor bears to the total value of the Work included within the Contract Sum, plus (ii) a pro rata portion of the Contractor's fee (as set forth on the Owner-approved Schedule of Values) based on the percentage obtained by dividing the Work properly performed and completed (including Design Services) through the effective date of such termination for convenience by the total Work required to be performed by Contractor under this Agreement, less all payments previously made to Contractor under the Contract and any amounts owed by Contractor to Owner under the Contract. Any sum due to Contractor pursuant to the preceding sentence shall be promptly paid by Owner, and any overpayment shall be promptly refunded by Contractor to Owner.

8.3.1 In the event that (i) Owner terminates this Agreement for convenience, and (ii) Contractor fulfills all of its obligations with regard to such termination as provided in this Agreement and all other obligations arising prior to such termination (including but not limited to the obligation to cause the Design Build Documents to comply with all Governmental Requirements), and (iii) Owner within six (6) months from the effective date of such termination for convenience retains a contractor other than Contractor to complete the Project using Contractor's Design Build Documents, Owner shall pay to Contractor (upon Owner's commencement of construction with such other contractor and based on the foregoing), the amount of $250,000 as an additional fee relating to the termination for convenience.

8.4 Contractor's Cooperation Following Termination. If Owner terminates this Agreement pursuant to a right set forth in the Contract Documents, Contractor, upon receipt of Owner's termination notice, shall: (i) place no further orders or subcontracts for materials, equipment, services, or

facilities, (ii) discontinue the Work on that date specified in the notice and thereupon vacate the Property and remove all equipment and materials owned by Contractor therefrom, (iii) promptly execute or cause the execution of any and all required documents and assignments of right to Owner in connection with the termination of Contractor's Work (including, without limitation, those required under *Section 7.3* of this Agreement), and (iv) deliver to Owner all such documents and all materials, equipment, or other items or things for whose cost the Contractor requests or has requested reimbursement under this Agreement. Owner, however, shall not be obligated to pay or reimburse Contractor for any costs for which Contractor may be liable to Subcontractors or Vendors on account of cancellation, termination, or restocking charges of any kind that are due to Contractor's failure to bind such Subcontractors and Vendors to the terms and conditions of this Contract relating to termination. Any of Contractor's equipment, machinery and supplies not removed from the Property within seven (7) calendar days from the date of Owner's request may be removed and stored by Owner at Contractor's sole risk and expense.

8.5 Suspensions By Owner.

8.5.1 **Owner's Right To Suspend For Convenience.** Owner may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as Owner elects (and without limitation of any of Owner's rights with respect to a breach or default by Contractor) by giving Contractor five (5) calendar days' written notice specifying which portion of the Work is to be suspended, delayed, reduced or interrupted and the effective date of same. Such suspension, delay, reduction or interruption shall continue until Owner terminates the same by written notice to Contractor. No such suspension, delay, reduction or interruption by Owner shall constitute a breach or default by Owner under the Contract Documents. Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

8.5.1.1 **Payment Upon Suspension For Convenience.** In the event of a suspension, delay, or interruption for convenience by Owner, any necessary equitable adjustment shall be made by Change Order pursuant to *Sections 3.1.2 and 4.2.5* of this Agreement (i) for an unavoidable increase, if any, in the Contract Sum, and/or an extension, if necessary, in the Scheduled Completion Date, caused solely by such suspension, delay or interruption ordered by Owner for convenience, but only if and to the extent such delay, suspension or interruption exceeds a period of twenty (20) consecutive calendar days following commencement of the construction phase of the Work, and (ii) for any reduction in the Contract Sum, and acceleration of the Scheduled Completion Date, relating to any such suspension, delay, interruption or reduction by Owner under this *Section 8.5.* No increase or upward adjustment shall be made in the Contract Sum for any such suspension, delay, interruption or reduction, and in no event shall Owner be liable for, or shall Contractor or any Subcontractor or Vendor or any other person performing any Work be entitled to, any lost opportunity, lost profit or consequential damages as a result of any suspension, delay, interruption or reduction by Owner under this *Section 8.5*.

8.5.1.2 *Provided, however,* that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay, or interruption by another cause for which Contractor or a Subcontractor or Vendor is responsible.

8.6 Payment to Contractor Upon Termination for Cause.

8.6.1 If Owner terminates the Contract for Contractor's breach or default (and subject to the satisfaction by Contractor of the conditions set forth in *Section 8.6.3* below), Contractor shall thereafter be entitled, as and when provided in *Section 8.2* of this Agreement, to reimbursement only of such amount (if any), by which:

8.6.1.1 the Cost of the Work for Work actually and properly completed by Contractor (and not cancelable or refundable) in accordance with this Agreement and the other Contract Documents up to the date of such termination (but not to exceed the portion of the Contract Sum fairly allocable to the Work so completed), exceeds:

8.6.1.2 the total of (i) all payments theretofore made to Contractor under the Contract Documents, and (ii) all damages and other costs and expenses incurred by Owner, directly or indirectly, arising out of or as a result of Contractor's breach or default, including, without limitation: (1) the cost of any additional consultants' services, or managerial and administrative services required thereby, (2) any additional costs incurred in retaining another architect, contractor or other subcontractors, (3) any additional financing, interest or fees and other costs that Owner must pay, including by reason of a delay in completion of the Work, Owner's termination of Contractor and the finishing of the Work by another method after such termination, (4) attorneys' fees and expenses, and (5) any other damages, costs, and expenses Owner may incur as a result of Contractor's breach or default, including if Owner elects to complete the Project after such termination, the amount by which the actual cost of completing the Project (including the actual cost of components of the Project that are not part of the Work) is greater than what such actual cost (including the actual cost of the components of the Project that are not part of the Work) would have been if Contractor had fulfilled its obligations under the Contract Documents, and if Owner elects to not complete the Project after such termination, all damages suffered by Owner arising out of Contractor's breach of this Agreement.

8.6.2 If the amount referred to in *Section 8.6.1.2* of this Agreement exceeds the amount referred to in *Section 8.6.1.1* of this Agreement, Contractor shall pay the difference to Owner immediately upon Owner's demand and such amount shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

8.6.3 Any reimbursements or payments to be made to Contractor under this *Section 8.6* are expressly conditioned on (i) Contractor previously having delivered to Owner possession and unfettered access to the Work and Property and all materials, equipment, tools and the like (undamaged and in good condition) which Owner has paid for and/or been billed for; (ii) Contractor previously having delivered to Owner all the items listed in, and having performed all the obligations described in, *Sections 2.7.5.1 through 2.7.5.12* of this Agreement; (iii) Contractor previously having performed its obligations under *Section 7.3* of this Agreement; and (iv) Contractor previously having complied with such other obligations under the Contract Documents as Owner and/or Owner's Lenders reasonably require.

8.7 Cumulative Remedies. The rights and remedies of Owner under this *Article 8* shall be non-exclusive, and shall be in addition to all other rights and remedies available to Owner under the Contract or at law, in equity or otherwise.

9. CONTRACTOR'S REMEDIES.

9.1 Contractor's Remedies.

9.1.1 If payment from Owner for a Payment Application (exclusive of amounts properly retained or withheld or in dispute under the Contract), approved by Owner and Owner's Lenders in accordance with this Agreement, has not been received by Contractor within thirty (30) calendar days of the date payment is due pursuant to this Agreement, Contractor may cease work until such payment has been received, in which case the Scheduled Completion Date will be extended by the number of days of the cessation of Work. If payment of undisputed amounts to which Contractor is otherwise then entitled pursuant to the terms of this Agreement are not paid by Owner to Contractor within thirty (30) calendar days after written notice by Contractor (following the 30-calendar day period noted above) that the same are past due, Contractor may terminate this Agreement upon five (5) additional business days' written notice to Owner.

9.1.2 If Contractor terminates this Agreement with cause in accordance with this Agreement, Contractor shall be entitled, as its exclusive remedy, to the recovery of the amounts (if any) to which Contractor would have been entitled had Owner, pursuant to *Section 8.3* of this Agreement, terminated this Agreement for convenience effective as of the date this Agreement is so terminated by Contractor. Contractor, notwithstanding any provision of this Agreement or otherwise, shall in no event be entitled to or seek recovery of any other amounts (including, without limitation, consequential damages, lost profits, lost opportunities, overhead, or similar amounts) in the event of any reduction in the scope or scale of the Work or any suspension, delay, interruption or termination thereof, including, but not limited to, under *Sections 8.2, 8.3, 8.5 or this Section 9.1* of this Agreement.

10. INSURANCE.

10.1 Owner Controlled Insurance Program.

10.1.1 The Owner, at its expense, has implemented an Owner Controlled Insurance Program ("**OCIP**") to furnish certain insurance coverages with respect to activities on the Property for the Project. The OCIP will be for the benefit of Owner, Contractor, and Subcontractors of all tiers (unless specifically excluded) who have employees at the Project. Such coverage applies only to Work performed under the Contract Documents at the Property. The OCIP shall not include, and Owner shall not be responsible for providing, any insurance coverages other than those specifically identified in the OCIP Manual (defined in *Section 10.1.2* of this Agreement). In addition, the first $25,000 of each loss or damage covered under the Builder's Risk Insurance policy, or uninsured losses, shall be paid for by the responsible Contractor or Subcontractor. The Builder's Risk insurance provided by Owner also does not cover loss of, or damage to, any tools, implements, equipment, scaffolds, form work, machinery, cranes, consumables, office trailers, tool sheds, temporary structures or anything else which is not intended to become a permanent part of the finished Project. Contractor and eligible Subcontractors must provide their own insurance for activities off the Property and automobile liability pursuant to the OCIP Manual, and the costs of such insurance for Contractor and Subcontractors shall be solely Contractor's and Subcontractor's responsibility. To the extent Contractor and or any Subcontractor becomes ineligible for the OCIP or is no longer covered by the OCIP, Contractor and such Subcontractor shall provide all required insurance under the OCIP Manual.

10.1.2 Details concerning the OCIP are provided in the "**OCIP Manual**" which is attached hereto as *Exhibit K* and incorporated herein by this reference, and which has been made available to Contractor and has been or will be made available to its Subcontractors, for

use in preparing their bids and estimates and in planning the performance of their Work. Contractor and each Subcontractor will participate in the OCIP established for the Project in accordance with the OCIP Manual. Participation in the OCIP is mandatory but not automatic. Contractor shall, and Contractor shall cause all Subcontractors to, complete all forms, submit the information required and abide by the mandates established in the OCIP Manual. Any exceptions to this requirement must be approved by Owner in writing in advance.

10.1.3 At the end of the Project, prior to Final Payment, a final audit will be conducted (the "**OCIP Audit**") to determine the exact amount of the credit based on the insurance provided under the OCIP, and the Contract Sum will be adjusted pursuant to Change Order downward (but not in any event upward) to reflect the exact amount of the credit determined pursuant to the OCIP Audit. Contractor shall carefully review all Subcontractor and pricing information to ensure that Owner is not required to pay a second time, as part of the Contract Sum, insurance coverages Owner has already purchased under the OCIP. Contractor also shall ensure that the net cost, if any, of any Change Order entered into pursuant to this Agreement excludes any costs for insurance coverages Owner is furnishing under the OCIP, and Contractor shall expressly identify in any Change Order any credits owing to Owner in connection with such Change Order for cost savings to be realized in connection with the Change Order as a result of Owner's furnishing of the insurance coverages provided under the OCIP.

10.2 Professional Liability Insurance.

10.2.1 Prior to commencing Work on the Project, Contractor shall cause Project Architect (including, without limitation, any architects and structural engineers and any other design professionals performing Work relating to the Project for Contractor) to obtain, fully pay for and maintain throughout the term of this Agreement and thereafter (as specified below) "claims made" Professional Liability Insurance, in form and substance acceptable to Owner in its reasonable discretion ("**Professional Liability Insurance**"). Such Professional Liability Insurance shall include contractual coverage and endorsements allowing insureds to sue other insureds (i.e., cross liability), with minimum limits of One Million Dollars ($1,000,000.00) per claim, with a deductible to be paid by Contractor and/or Project Architect of no more than Seventy-Five Thousand Dollars ($75,000.00) per claim, and shall provide coverage for any errors and/or omissions of Project Architect (including, without limitation, any architects and structural engineers and any other design professionals performing Work relating to the Project for Contractor). Contractor shall cause Project Architect to maintain such Professional Liability Insurance throughout the term of the Work and the Project and for a period of at least two (2) years after Completion of the Work. The Property and the Project shall be identified on the certificate of insurance which shall be provided by Contractor to Owner prior to commencement of the Work, and Owner, Wynn Resorts, LLC, Wynn Design and Development, LLC, Butler Ashworth, Ltd. and Valvino Lamore, LLC, their directors, officers, representatives, agents and employees shall be named as additional insureds. Implementation of insurance under this *Section 10.2.1* shall not be construed as a limitation on the nature or extent of Contractor's obligations under this Agreement or the Other Contract Documents. Any approval of the Professional Liability Insurance by Owner will not be

and shall not be construed as a representation, certification or warranty of the solvency of any insurer or the sufficiency of any amount, type or form of any insurance. The Professional Liability Insurance policy shall provide that it shall not be cancelled or amended or materially altered (including by reduction in the scope or limits of coverage) without at least sixty (60) days' prior written notice being given to Owner, and Contractor shall ensure that the policy is not cancelled, amended or materially altered without at least sixty (60) days' prior written notice being given to Owner. If, for any reason, Contractor fails to cause Project

Architect to obtain, pay for and maintain the Professional Liability Insurance required hereunder, Owner shall have the right, but not the obligation, to obtain the same in the name and for the account of Contractor in which event Contractor shall promptly furnish to Owner all information that may be requested by Owner to permit Owner to obtain such coverage on behalf of Contractor and Contractor shall pay the premiums, expenses, fees and costs incurred by Owner in obtaining such coverage with interest thereon per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date such premiums, expenses, fees and costs were incurred by Owner until the date repaid by Contractor.

10.3 Evidence of Coverage.

10.3.1 **Carriers Acceptable To Owner.** All policies required of Contractor and Subcontractors pursuant to this Agreement shall be maintained with insurance carriers that are acceptable to Owner and licensed in the State of Nevada.

10.3.2 **Failure to Comply.** Neither the Contractor nor any of its Subcontractors shall be entitled to receive payment for any Work performed, or to commence operations or Work on the Property or elsewhere until such time as they provide acceptable evidence of compliance with the requirements of this *Article 10*. Any additional costs or delays caused by or arising out of any failures to comply with this *Article 10*, including the failure to furnish acceptable certificates of insurance prior to the Date of Commencement, shall be solely the responsibility of Contractor and its Subcontractors.

10.4 Deductibles. If any policy required to be purchased pursuant to this Agreement is subject to a deductible, self-insured retention or similar self-insurance mechanism which limit or otherwise reduces coverage, the deductible, self-insured retention or similar self-insurance mechanism shall be the sole responsibility of Contractor in the event of any loss arising out of the acts or omissions of Contractor, any Subcontractor or vendor or other person performing Work on or at the Project.

10.5 Cooperation by the Parties. Owner and Contractor shall fully cooperate with each other in connection with the collection of any insurance monies that may be due in the event of a loss. Owner and Contractor shall promptly execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining recovery of any such insurance monies.

10.6 Duration. All General Liability, Automobile Liability, Worker's Compensation and Employer's Liability insurance required by Owner shall be kept in force without interruption until Completion of the Work. Contractor and its Subcontractors shall maintain completed operations insurance for a period of two (2) years after Completion of the Work for non-OCIP covered scope. The Builder's All-Risk Insurance shall remain in force until Contractor has achieved Completion of the Work in its entirety in accordance with this Agreement.

11. INDEMNIFICATION.

11.1 Indemnity. To the fullest extent permitted by law, Contractor hereby indemnifies and agrees to protect, defend, and hold Owner, Wynn Resorts, LLC, The Wynn Group, Wynn Design and Development LLC, Valvino Lamore, LLC, and Owner's Lenders and their respective subsidiaries, affiliates, and parent companies, and their respective members, officers, directors, employees, agents, shareholders, trustees, beneficiaries, heirs, administrators, personal representatives, advisors, attorneys, and successors and assigns (collectively "**Indemnitees**" and singularly an "**Indemnitee**") harmless from and against any and all claims, liabilities, obligations, losses, suits, actions, legal or administrative proceedings, damages, costs, expenses, awards, or judgments, including, without limitation, attorneys' fees and costs (whether or not suit is filed) (collectively "**Claims**" and singularly a "**Claim**"), any Indemnitee(s) may suffer or incur or be

threatened with, and whether based on statutory, contractual, tort, common law or other theory, that are: (i) imposed by law; (ii) arising, by reason of, or relating directly or indirectly to (a) the death of or bodily injury to any person or persons, including, without limitation, employees of Contractor, (b) injury to property (including loss of use and the Work itself or the Casino Improvements, and including all costs for repair or replacement of Work, materials, supplies or equipment (whether on or off the Property or in transit) and including whether lost, stolen, damaged or destroyed), equipment, or material, including, without limitation, any of the same resulting or arising out of the performance of the Work performed by Contractor or any Subcontractor or Vendor, or any other person performing Work in connection with the Project for, on behalf of, or under the direction of Contractor, (c) violation of or failure to comply with or abide by any Governmental Requirements or variations from the Contract Documents in the actual construction of the Work, (d) any infringement of the rights of any third party, including, without limitation, copyright and patent rights (in connection with which Contractor shall pay all royalties and license fees), (e) any stop notices, mechanics' liens or similar claims relating to any labor, services, materials, goods or equipment, whether provided by Contractor, Subcontractor, Vendor or any other person performing Work in connection with the Project, and (f) any breach or alleged breach of Contractor's warranties, representations, obligations, covenants or agreements set forth in the Contract, and/or (iii) relating to or arising out of or resulting from, directly or indirectly, the performance of the Work, or from any act or omission of Contractor, or any Subcontractor or Vendor, or any other person performing Work in connection with the Project for, on behalf of, or under the direction of Contractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable or responsible at law, in equity, under the Contract Documents or otherwise, regardless of whether or not such Claim is caused in whole or in part by an Indemnitee; *provided, however,* that such indemnification obligation, as to a respective Indemnitee, shall not extend to Claims to the extent, but only to the extent, that such result from the gross negligence or willful misconduct of such Indemnitee.

11.1.1 The indemnification obligations under this *Article 11* or otherwise under the Contract Documents shall apply to and include those Claims arising from the negligent, tortuous, intentional or other acts of the indemnifying parties, and such indemnification obligations are primary to any insurance in the names of the Indemnitees. Such indemnification obligations shall not be limited in any way by any limitation on the amount or type of insurance coverages carried whether pursuant to the Contract Documents or otherwise, the amount of insurance proceeds

available or paid, or any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor or other person or entity under workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.1.2 The indemnification obligations under this *Article 11* or otherwise under the Contract Documents also shall not be construed to negate, abridge, or reduce other rights or obligations of Contractor, including, but not limited to, any obligation of indemnity which would otherwise exist at law, in equity, or otherwise in favor of an Indemnitee.

11.1.3 The indemnification obligations under this *Article 11* or otherwise under the Contract Documents, including defense costs, shall include all attorneys' fees, investigation costs, expert witness fees, court costs, and other costs and expenses incurred by any Indemnitee. If any Claim occurs or is threatened, Contractor shall promptly notify Owner and shall defend Owner and the other Indemnitees with counsel reasonably acceptable to Owner, at Contractor's expense, unless Owner elects to defend itself, in which case Contractor shall pay for Owner's reasonable defense costs.

11.1.4 Contractor shall use all best efforts to cause all subcontracts, purchase orders or other agreements with Subcontractors or Vendors, or any other person performing Work in

connection with the Project for, on behalf of, or under the direction of Contractor, to include the same indemnity as that given by Contractor in this *Article 11* in favor of the Indemnitees.

11.2 Survival of Indemnification Provisions. The indemnification obligations set forth in this *Article 11* shall apply irrespective of whether or not any Subcontractors or Vendors obtain or fail to obtain any required insurance coverages, shall apply during the performance of the Work, and shall survive any termination of the Contract or the Completion of the Work.

12. WARRANTY OBLIGATIONS.

12.1 Contractor's Warranty. Contractor guarantees and warrants to Owner that (a) the Work, whether performed by Contractor's own personnel or by any Subcontractors or Vendors, shall be first class in quality, free from all faults and defects whatsoever (including, without limitation, patent, latent or developed defects or inherent vice), and in strict conformance with the Contract Documents and the highest standard for construction practices and quality applicable to first class, state-of-the-art parking structures, and (b) all materials, appliances, mechanical devices, supplies, and equipment incorporated into the Work shall be new and first class in grade and quality and shall strictly meet the specifications and requirements set forth in the Contract Documents. If requested by Owner at any time and from time to time, Contractor will furnish satisfactory evidence to Owner as to the kind and quality of materials, appliances, mechanical devices, supplies and equipment incorporated or to be incorporated into the Work. All Work not conforming to the requirements of this *Section 12.1* (including, without limitation, substitutions or deviations not properly approved and authorized by Owner in writing by Change Order), shall be considered defective.

12.2 Contractor's Warranty Period. While Contractor, Subcontractors and Vendors shall be responsible for strict compliance with the requirements of *Section 12.1* above throughout the course of the Work, the "**Warranty Period**" shall commence upon Final Payment and shall extend for a period of twelve (12) months (and five (5) years with regard to the Project's elevator machine room roof and the Project's retaining walls which are to be watertight and leakproof), from the date of Final Payment or for such longer period as may be set forth in an applicable manufacturer's warranty or prescribed under Governmental Requirements or otherwise (the "**Warranty Period**"). Nothing contained in this *Article 12* shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents or under applicable law, in equity or otherwise, or reduce the period of any other similar warranty or guaranty that may apply at law or otherwise to the Work. Establishment of the time periods as described in this *Article 12* relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

12.3 Compliance With Contract Documents. Upon receipt of Owner's written notice (whether during the course of the Work, during the Warranty Period, or during any longer period of time as may be prescribed by Governmental Requirements or otherwise), Contractor shall, at Contractor's sole cost and expense and at no cost to Owner, promptly perform all corrective services (including, without limitation, furnishing all labor, materials, equipment and other services at the Property and elsewhere) to Owner's satisfaction as may be necessary to remedy any defective workmanship or omissions in the Work, including, without limitation, promptly correcting or replacing any Work rejected by Owner or which is incomplete, defective or fails to conform strictly to the Contract Documents, whether observed before or after Completion of the Work and whether or not fabricated, installed, or completed. Without in any way limiting the foregoing, if within twelve (12) months after Final Payment, or within such longer period of time as may be

applicable, any of the Work is found by Owner not to be in accordance with the Contract Documents or Governmental Requirements or otherwise defective or incomplete, Contractor shall correct and/or replace it promptly after receipt of a written notice from Owner to do so. In addition, if within five (5) years after Final Payment, or within such longer period of time as may be applicable, the Project's elevator machine room roof and/or the Project's retaining walls are not watertight and leakproof at every point and in every area (except where leaks can be attributed to damage to the Work proximately caused by extraordinary, external forces beyond Contractor's control and which Contractor could not reasonably have anticipated), Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at Contractor's own expense, do any work necessary to make such Work watertight. Contractor's compliance with its obligations as stated in this *Article 12*, and Owner's acceptance of such corrective services, shall at all times be determined by ascertaining whether Contractor has achieved strict compliance to Owner's satisfaction with both the written and inferable requirements contained in the applicable Contract Documents approved by Owner and Governmental Requirements.

12.4 Warranty Costs. All costs incurred by Contractor in fulfilling Contractor's remedial warranty obligations as set forth in this *Article 12* shall be solely Contractor's responsibility, including, without limitation, costs for additional testing and inspections and compensation for the services of other

professionals or consultants made necessary thereby. Contractor also shall, as part of Contractor's warranty and guarantee at Contractor's own cost and expense, repair or replace any other damaged components, material, finishes, vehicles and other Work or portions of the Project or other property, including, without limitation, the Casino Improvements, damaged, affected or otherwise made necessary by or resulting from such defective, non-conforming or incomplete Work, to return the same to their original condition.

12.5 Timeliness of Corrective Services. To the extent possible, Contractor shall fully perform all warranty and corrective services to Owner's satisfaction within five (5) calendar days of the receipt of Owner's written notice of defective workmanship. If the corrective services require more than five (5) calendar days for completion, Contractor shall submit, within five (5) calendar days of receipt of Owner's written notice, a comprehensive written proposal itemizing all corrective actions necessary which Contractor is prepared to and shall immediately undertake and diligently pursue to enable the Work to achieve strict compliance with the latest Contract Documents, including the latest Plans and Specifications. In performing such corrective Work, Contractor shall perform its Work so as to cause the least inconvenience and disruption to Owner's business which may require performance of Work at hours when Owner's business is least active. Contractor shall not be entitled to the extra costs, if any, incurred in connection with performing corrective Work during non-business hours. Additionally, the provisions of this Agreement relating to cooperation with Owner, access, avoidance of disruption and related matters as set forth therein also shall apply to the performance of any warranty-related work.

12.6 Warranty Survival. Contractor's warranty and guarantee obligations set forth in this *Article 12* shall apply to Work done by Subcontractors or Vendors, as well as to Work done by employees of Contractor, and such provisions shall survive acceptance of the Work, any termination of the Contract, and Completion of the Work. Contractor shall be responsible to fully indemnify and hold the Indemnitees harmless from any and all liens, claims, lawsuits, costs and expenses which may arise out of the failure of the Contractor (or any Subcontractor or Vendor) to fulfill its warranty obligations pursuant to this Contract and/or the Contractor's failure to enforce the termination by Owner of all or any portion of the Work being performed by Subcontractors and Vendors of every tier.

12.7 Owner's Right To Correct. In the event Contractor fails to timely correct incomplete, nonconforming or defective Work following Owner's written notice described in *Section 12.5* above,

Owner shall have the right to correct or arrange for the correction of any defects or omissions in the Work at Contractor's sole cost and expense and not as part of the Contract Sum. Contractor shall bear all costs incurred by Owner in correcting such defective Work, including, but not limited to, additional costs for redesigns, replacement contractors, materials, equipment and all services provided by Owner's personnel. Owner shall be entitled to withhold and offset, subject to any notice requirements, all costs incurred during any such corrective work against any funds which are otherwise due or which may become payable to the Contractor. If payments due Contractor are not sufficient to cover such amount, Contractor shall immediately upon demand pay the difference to Owner and such difference shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

12.8 Owner's Right to Supplement Work of Contractor. If the Contractor violates or breaches any of the terms, conditions or covenants of the Contract, then Owner may, without prejudice to any other remedy it may have, provide such labor and materials as are reasonably necessary to remedy such deficiency including the right to hire another contractor to supplement the Work of the Contractor and deduct (after giving written notice to Contractor) all costs thereof from any money due or thereafter becoming due to the Contractor by all such amounts. If payments due Contractor under the Contract Sum are not sufficient to cover such amount, Contractor shall immediately upon demand pay the difference to Owner and such difference shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

12.9 Acceptance of Non-Conforming Work. Owner may, in its sole and absolute discretion, elect to accept a part of the Work which is not in accordance with the requirements of the Contract Documents. In such case, the Contract Sum shall be reduced as appropriate and equitable. Owner's acceptance of any non-conforming Work shall not waive or otherwise affect Owner's right to demand that Contractor correct any other defects or areas of non-conforming Work.

12.10 Warranty Exclusions. Contractor's warranty obligations shall not apply to defects caused by ordinary wear and tear.

12.11 Written Guaranty. All guarantees and warranties specified in the Contract, including Contractor's general warranty in this *Article 12*, shall be executed in writing by Contractor and each Subcontractor and Vendor, as applicable, on their respective letterhead, signed jointly by Contractor and Subcontractor or Vendor, as applicable, and furnished to Owner upon commencement of the respective term of each such guarantee and warranty and as a condition precedent to Final Payment. Owner shall, in addition to the guarantee and warranty provided for in this *Article 12*, also have the benefit of, and Contractor shall assign to Owner in form and substance satisfactory to Owner, all warranties, service life policies, indemnities and guarantees with respect to any and all materials, appliances, mechanical devices, supplies and equipment incorporated into the Work and given by the manufacturer, retailer, or other supplier, which shall be supplied and assigned to Owner promptly after such is received by or becomes available to Contractor and as a condition precedent to Final Payment. Further, at Owner's request, Contractor shall assist Owner in enforcing all such warranties, guarantees, policies and indemnities.

13. DEFINITIONS. In this Agreement, the following terms shall have the respective meanings set forth below.

13.1 "Change in the Work" means variations, modifications, additions, reductions, deletions or changes to the Work from that indicated in the Contract Documents as constituted from time to time.

13.2 "Change Order" means a Change Proposal or Construction Change Directive agreed to in writing by Owner and Contractor. Change Orders can modify the Contract Sum and/or the Scheduled Completion Date, and each Change Order must state whether, and by how much, the Contract Sum and/or the Scheduled Completion Date will be modified as a result of the respective Change Order. Change Orders will be effective only when in a writing executed by both Contractor and Owner.

13.3 "Change Proposal" means a written proposal prepared and signed by Contractor setting forth (i) the Changes in the Work requested by Owner or proposed by Contractor, (ii) the amount of adjustment, if any, in the Contract Sum (using the formula in *Section 3.1.2* of this Agreement), and (iii) the extent of adjustment, if any, in the Scheduled Completion Date. A Change Proposal is only a proposal unless and until signed in writing and accepted by Owner as a Change Order.

13.4 "Construction Change Directive" means a written order, requested by Owner, prepared by Owner, and signed by Owner, and given to Contractor, directing a Change in the Work and stating a proposed basis for adjustments, if any, in the Contract Sum and/or the Scheduled Completion Date, or any of them or any combination of them. Owner may by Construction Change Directive, without invalidating or breaching the Contract, order a Change in the Work.

13.5 "Cost of the Work" means costs actually and necessarily incurred by Contractor in the proper performance of the Work, without markup or other add-on. Such costs shall be at rates not higher than the standard then paid in Las Vegas, Nevada except with Owner's prior written consent. The Cost of the Work shall include only the following items set forth in *Sections 13.5.1 through 13.5.8* herein below.

13.5.1 *Labor Costs.*

13.5.1.1 Wages and salaries, charged at Contractor's normal and customary rates which shall be no higher than the then-applicable market rates in Las Vegas, Nevada, of construction workers directly employed by Contractor to perform the construction of the Work at the Property or, with Owner's prior written consent, at off-site workshops.

13.5.1.2 A reasonable labor burden on wages and salaries included in the Cost of the Work under *Section 13.5.1.1* above, defined as a percentage of such actual wages and salaries of Contractor's construction workers described in *Section 13.5.1.1* above, and which percentage shall differ on a trade-by-trade basis ("**Labor Burden**"). Items within and covered by the percentage Labor Burden shall not include any mark-up or fee of any kind and shall include vacation and similar benefits and worker's compensation customarily provided by Contractor to its construction workers described in *Section 13.5.1.1* above. Items covered by or included within the Labor Burden shall not be separately or otherwise included in the Cost of the Work.

13.5.2 *Subcontract Costs.* Payments made by Contractor to Subcontractors in accordance with the terms of the Contract Documents and the requirements of subcontracts approved in writing in advance by Owner.

13.5.3 *Design Costs.* Costs incurred by Contractor for Design Services, including any payments made by Contractor to Project Architect in connection with the Project if Project Architect is an independent design professional retained by Contractor pursuant to a separate written contract between Contractor and Project Architect.

13.5.4 *Costs of Materials and Equipment Incorporated in the Completed Construction.* Costs of materials and equipment incorporated or to be incorporated in the completed construction, including costs of transportation and costs of excess materials required to provide a reasonable allowance for waste and for spoilage. Unused excess

materials, if any, shall be handed over to Owner at the Completion of the Work or, at Owner's option, shall be sold by Contractor and proceeds from such sales shall be credited to Owner as a deduction from the Cost of the Work.

13.5.5 *Costs of Other Materials and Equipment, Temporary Facilities and Related Items.*

13.5.5.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor at the Property and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by Contractor. Costs for items previously used by Contractor shall mean fair market value.

13.5.5.2 Costs of removal of debris (created in the normal course of performance of the Work) from the Property.

13.5.6 *Other Costs.* Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

13.5.7 *Emergencies.* Reasonable out-of-pocket costs which are actually incurred by Contractor in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

13.5.8 *Reimbursables and General Requirements Costs.* Out-of-pocket costs actually incurred by Contractor for the following, and without any mark up:

13.5.8.1 Reasonable telegrams, long-distance telephone calls, postage and parcel delivery charges, telephone service at the Property and petty cash expenses of the Property office, all as related to the Project.

13.5.8.2 Fees, taxes and assessments for the building permits for the Work and for other permits, licenses and inspections of the Work for which Contractor is required by the Contract Documents to pay, and third party expediting and processing fees, if any, for obtaining the foregoing permits only if approved in advance in writing by Owner.

13.5.8.3 Reasonable rental charges for temporary facilities (including trailers, fences, dumpsters, storage facilities and portable toilets), machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor, including costs for transportation, installation, minor repairs and replacements, emptying, dismantling and removal, whether rented from Contractor or others.

13.5.8.4 Reasonable costs for offsite storage of materials or equipment if approved in writing by Owner.

13.5.8.5 Sales or use taxes to the extent approved in writing by Owner for inclusion in the Cost of the Work.

13.5.8.6 Royalties and license fees paid for the use of a particular design, process or product if expressly required by Owner under the Contract Documents.

13.5.9 *Costs Not to be Reimbursed.* Notwithstanding anything to the contrary in the Contract Documents or otherwise, the Cost of the Work shall not include:

13.5.9.1 Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the Property office, except for solely Steve Smith as Project Manager and Dana De Felice as Project Coordinator but only to the extent of their time devoted to Work at the Project performed by Contractor.

13.5.9.2 Expenses of Contractor's principal office and offices other than the Property office.

13.5.9.3 Overhead and general expenses.

13.5.9.4 Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

13.5.9.5 Rental costs of machinery and equipment, except as otherwise specifically provided in this Agreement.

13.5.9.6 Costs due to the negligence or fault of, or failure to comply with the terms and conditions of this Agreement or any of the other Contract Documents or any subcontracts or purchase orders, by Contractor, any Subcontractor or Vendor, including, without limitation, the cost of correction and/or replacement of any damaged, defective or nonconforming Work, disposal of materials and equipment incorrectly ordered or supplied, and replacement of materials and equipment incorrectly ordered or supplied, or making good any damage to property (including, without limitation, the Casino Improvements) not forming part of the Work.

13.5.9.7 Cost of any insurance maintained (except as otherwise expressly provided in this Agreement).

13.5.9.8 Costs of repairing Work or the Casino Improvements damaged by Contractor, Subcontractors, and/or Vendors.

13.5.9.9 Costs of occupational or business licenses, fees or taxes required by reason of Contractor's general operations, and costs of trade associations with which Contractor is associated.

13.5.9.10 Costs incurred by Contractor in satisfying its indemnification obligations pursuant to *Article 11* of this Agreement or any other provision of this Agreement or the other Contract Documents.

13.5.9.11 Costs associated with Work performed by Contractor pursuant to *Article 12* of this Agreement.

13.5.9.12 Costs of labor and materials for any portion of the Work and/or Project not performed by Contractor (or not performed or supplied pursuant to a written agreement with Contractor or any of its Subcontractors or Vendors), including, but not limited to, electronics, audio visual equipment, security systems, and other similar items whether or not in the Plans and Specifications and the other Contract Documents.

13.5.9.13 Payments on account of materials, supplies, and equipment until delivered and suitably stored at the Property for subsequent incorporation or consumption in the Work, except as may otherwise be expressly provided in this Agreement.

13.5.9.14 Payments of any kind to Contractor or any other consultant, engineer or contractor, other than as expressly provided in this Agreement.

13.5.9.15 Costs which would cause the Contract Sum (as may be adjusted from time to time in strict accordance with this Agreement) to be exceeded.

13.5.9.16 Costs incurred by Contractor in preparing, modifying or amending Change Proposals, or analyzing, responding to, or disputing Construction Change Directives.

13.5.9.17 Any costs incurred by Contractor relating to a Change in the Work without a Change Order or Construction Change Directive.

13.5.9.18 Additional costs incurred by Contractor in complying with an Owner directive or notice under this Agreement, other than as expressly provided in this Agreement.

13.5.9.19 Labor Costs (as defined in *Section 13.5.1* of this Agreement) incurred in obtaining permits, licenses or inspections.

13.5.9.20 Any costs not specifically and expressly described in *Sections 13.5.1 through 13.5.8* of this Agreement.

13.5.9.21 Costs for materials which Owner ordered or for which Owner arranged delivery pursuant to this Agreement.

13.5.10 *No Duplication.* Notwithstanding the breakdown or categorization of any costs in this *Section 13.5* or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

13.6 "Delays in the Work" means delays in the Work which, notwithstanding Contractor's best and most diligent efforts to re-deploy its forces or that of Subcontractor, or re-schedule or re-sequence the Work, actually cause Substantial Completion of the Work to occur after the Scheduled Completion Date.

13.7 "Excusable Delays" means (i) based on Contractor's extensive experience in constructing projects of similar scope and complexity, based on Contractor's representations and other terms contained in *Section 5.10* of this Agreement, and based on and taking into account the Technical Studies and Reports, unforeseeable and/or unanticipatable Delays in the Work which are beyond Contractor's control and caused by unusually excessive rain or other unforeseeable excessive inclement weather, unforeseeable material shortages, fire, earthquake, riot, industry-wide labor disputes affecting the general Las Vegas, Nevada area and not limited to the Project (and not a jurisdictional dispute), national or state emergencies, acts of war or government moratorium, or (ii) delays that are the fault solely of Owner, but only if such delays affect critical path items and only after written notice from Contractor to Owner of such delay and Owner's failure to cure such delay within five (5) business days after receipt of such written notice from Contractor, all in accordance with and subject to *Section 4.2.5* of this Agreement.

13.8 "Governmental Requirements" means all applicable laws, consents, approvals, ordinances, codes, rules, directives, orders, statutes, permits (including, without limitation, those listed on Permits and Entitlements attached hereto as *Exhibit D*), regulations, entitlements, standards, mitigation measures, policies, covenants, conditions and restrictions, whether federal, state or local, or governmental, administrative or private. The term Governmental Requirements shall also include, without limitation, the terms of the OCIP (as defined in *Section 10.1.1* of this Agreement) and any other insurance applicable to the Work.

13.9 "Substantial Completion of the Work" means the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so Owner can fully occupy or utilize the Work to allow construction-related vehicles to park and to move freely into, within, and out of the Project and other associated activities. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled; all designated or required governmental inspections and certifications have been made and posted, including, without limitation, the temporary certificate of occupancy and/or its equivalent; the designated instruction of Owner in the operation of all systems has been completed; and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner could occupy the building(s) comprising the Project and fully utilize such building(s) on that date (in the manner

described above), and all elements and utilities in and under the Project are fully functionable and operable as provided in the Contract, and the Completion of the Work by Contractor would not materially interfere with or hamper Owner's intended use, occupancy or enjoyment of the Project. When Contractor considers that the Work, or a portion of the Work which Owner agrees in writing to accept separately, is substantially complete, Contractor shall so notify Owner in writing. Upon receipt of Contractor's notice, Owner will make an inspection to determine whether the Work or designated portion of the Work is substantially complete in accordance with the Contract Documents. If Owner's inspection discloses an item which is not in accordance with the requirements of the Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion (as defined below), diligently and expeditiously complete or correct such item upon notification by Owner. Contractor shall then submit a request for another inspection by Owner to determine Substantial Completion of the Work. When the Work (or designated portion of the Work, if applicable) is substantially complete as determined by Owner and Owner's Lenders, Owner will prepare a "**Certificate of Substantial Completion**" which shall establish the date of Substantial Completion of the Work.

13.10 "Subcontractor" means any person or entity who has a contract with or is engaged or employed by Contractor, or with any other Subcontractor, or is engaged or employed by Contractor or any other Subcontractor, at any tier to construct or perform a portion of the Work and/or provide construction related services at the Project, and includes, without limitation, each of their respective employees, agents and representatives and any party any of them may be responsible or liable for at law, in equity or under the Contract Documents.

13.11 "Vendor" means any person or entity which has a purchase order or other agreement to provide materials, supplies, equipment and/or related services for the Work and/or provide installation services at the Project, through a contract, purchase order or other arrangement with Contractor or any Subcontractor at any tier, and includes, without limitation, their respective employees, agents, and representatives and any party any of them may be responsible or liable for at law, in equity or under the Contract Documents.

13.12 "Work" means all skilled, unskilled and professional labor, services, fabrication, materials, supplies, tools, equipment, fixtures, hardware, materials, and other things which are appropriate, desirable or necessary for Contractor to design, construct and complete the Project and otherwise fulfill its obligations under and in strict compliance with the Contract Documents, including, without limitation, all responsibilities and obligations of Contractor relative to Punchlist Items.

14. OWNER'S LENDERS

14.1 Owner's Lenders. Contractor acknowledges and agrees that Owner has provided notice to Contractor, and Contractor shall before entering into any subcontract or purchase contract provide notice to every Subcontractor and Vendor, that Owner's funds for construction of the Project, including payment of the Contract Sum, shall be borrowed and or derived substantially from one or more lenders providing financing for the Project from time to time ("**Owner's Lenders**"), and Owner's ability to obtain such funds shall be subject to one or more loan documents and conditions precedent to advances thereunder. The term "Owner's Lenders" shall also mean and include any and all trustees, intercreditor agents, disbursement agents, administrative agents, consultants, architects, inspectors, construction managers, auditors and engineers appointed or retained directly or indirectly by or on behalf of any of Owner's Lenders.

14.2 Payments. Owner's Lenders shall have the right at any time and from time to time to make payment directly to Contractor and/or by joint payee check to Contractor and any Subcontractor or Vendor, for Work performed under the Contract.

14.3 Audit Rights. Owner's Lenders shall have and be entitled to all of the same audit and inspection rights as Owner has under this Agreement.

14.4 Access. Owner's Lenders shall have and be entitled to all of the same rights to access and inspect the Property, Project and Work, wherever located, as Owner has under the Contract documents, at reasonable times and upon reasonable notice and subject to reasonable safety precautions.

14.5 Material Changes. Contractor acknowledges and agrees that certain material Changes in the Work, including those that increase the Contract Sum and/or extend the Scheduled Completion Date, shall be subject to the prior approval of Owner's Lenders and shall not become effective without such approval.

14.6 General Cooperation. Contractor agrees to cooperate fully with all such Owner's Lenders. Contractor agrees to (a) provide written notice to Owner's Lenders of any Change in the Work, material change in the manner or amounts paid to Contractor, extension or acceleration of the Scheduled Completion Date, or material change in the Plans and Specifications, (b) authorize Subcontractors and Vendors to communicate directly with Owner's Lenders regarding the progress of the Work, (c) provide Owner's Lenders with reasonable working space and access to telephone, copying and telecopying equipment, (d) communicate with Owner's Lenders and, on request to execute, provide and/or deliver as the case may be, such documents, certificates, consents, invoices and instruments, and other information, as Owner's Lenders may reasonably request with respect to the Work, the Project and/or payment of the cost thereof, (e) enter into such amendments to the Contract as Owner's Lenders may reasonably request, (f) make adjustments and modifications of the payment procedures provided for in the Contract as may be reasonably requested by Owner's Lenders in connection with permitting the disbursement of loan proceeds to pay for the Work, (g) otherwise facilitate Owner's Lenders' review of the construction of the Project, and (h) enter into a consent to assignment in favor of Owner's Lenders consenting to the collateral assignment of the Contract to Owner's Lenders.

15. MISCELLANEOUS PROVISIONS.

15.1 Subordination. Notwithstanding any other provision of the Contract Documents, and notwithstanding the provisions of Section 108.225 (and any related Section) of the Nevada Revised Statutes, Contractor agrees for itself and for every Subcontractor and Vendor and every other person performing any services or providing any materials relating to the Work, that any and all liens and lien rights and benefits (including enforcement rights) Contractor and or any of the other foregoing parties may or do have under applicable law (including, without limitation, Nevada Revised Statutes Sections 108.221 to 108.246), shall at all times be subordinate and junior to any and all liens, security interests, mortgages, deeds of trust and other encumbrances of any kind (on the Property and otherwise) in favor of any of Owner's Lenders ("**Lender Liens**"), notwithstanding that Work may be or is commenced or done on, and materials may be or are furnished to, the Property prior to any Lender Liens being imposed upon or recorded against the Property or any of Owner's assets and before expiration of the time fixed under applicable laws for the filing of mechanics and materialmen's liens. Contractor shall, and Contractor shall cause every Subcontractor and Vendor at every tier, and any other person performing services or providing materials relating to the Work to, sign and deliver to Owner and Owner's Lenders from time to time upon request by Owner or any of Owner's Lenders: (a) written and recordable acknowledgments and restatements of the provisions of this *Section 15.1* and the subordination described herein, and (b) such affidavits, certificates, releases, indemnities, waivers and instruments (and in form and content) as Owner's or Owners Lenders' title insurers shall require to allow such insurers to issue such title endorsements as Owner or Owner's Lenders require (including insuring first priority of Lender Liens). Contractor's, or any other party's, failure to provide the items

required in clauses (a) and (b) hereinabove upon request, or Owner's or Owner's Lenders' inability to obtain at any time endorsements to Owner's Lenders' title policies (or issuance of initial title policies) insuring first priority of Lender Liens, including, without limitation, senior to any mechanics' or materialmen's lien or lien rights, shall constitute a material default and breach of the Contract Documents and failure of a condition precedent to any payment by Owner owed to Contractor under the Contract or otherwise.

15.2 Time is of the Essence. Time is of the essence of this Agreement and each of the terms and conditions of this Agreement, including, without limitation, in the Completion of the Work in the manner set forth in the Contract. Whenever action must be taken under this Agreement during a period of time that ends on a Saturday, Sunday or federal or state holiday, then such period of time shall be extended until the next day which is not a Saturday, Sunday or such holiday.

15.3 Entire Agreement; Modification; Waiver. This Agreement and the other Contract Documents (including, without limitation, the Plans and Specifications and any amendments, modifications and supplements thereto) constitute the entire understanding and agreement of the parties to this Agreement concerning the Project and the Work, and supersede all prior or contemporaneous written or oral understandings or agreements of the parties, and there are no other agreements or understandings between the parties, with respect the Project and the Work. Each and all of the *Exhibits A* through and including K referenced in this Agreement are hereby expressly incorporated herein by this reference. No modifications of the Contract shall be binding unless executed in writing by the parties to this Agreement. No waiver of any of the provisions of the Contract shall be binding unless executed in writing by the waiving party, and any such waiver shall not constitute a waiver of any other provision of the Contract, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

15.4 Headings. Section and other headings are not to be considered part of this Agreement, have been included solely for the convenience of the parties, and are not intended to be full or accurate descriptions of the contents.

15.5 Assignment; Successors to be Bound. Contractor shall not assign its rights or delegate its duties under this Agreement or any other Contract Document, unless Owner shall have given Owner's written consent prior to any such assignment or delegation. Owner shall have the right to assign Owner's rights and delegate Owner's duties under this Agreement without Contractor's consent upon a sale, transfer or other disposition or hypothecation of the Property, including, without limitation, to any Owner's Lenders, and Contractor hereby agrees to execute any necessary consents required to facilitate such assignment. Owner may also, without Contractor's consent but with notice to Contractor, change its name from time to time. Owner may designate new representatives from time to time by giving Contractor written notice. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement, and their respective permitted transferees, successors, assigns and legal representatives.

15.6 Intent of Parties. Contractor and Owner acknowledge that applicable Nevada Revised Statutes in certain circumstances, among others (i) regulate the process by which an owner can withhold payment(s) to a contractor or subcontractor, including the amount(s) that can be withheld, and

(ii) regulate when and how an owner or a contractor can terminate a construction contract and the available remedies upon such termination. It is the express intent of the parties to this Agreement that Contractor completely and unconditionally waive to the fullest extent allowable each and all of those Nevada Revised Statutes that are inconsistent with the provisions of this Agreement, including those with regard to the matters described in the foregoing clauses (i) and (ii). *Provided, however,* Owner and Contractor acknowledge that some applicable provisions

of the Nevada Revised Statutes cannot be waived. Accordingly, to the extent the foregoing waiver by Contractor is expressly prohibited by applicable Nevada Revised Statutes as to certain provisions thereof, Contractor's foregoing waiver shall not be deemed to extend to those non-waivable provisions of the Nevada Revised Statutes. In such circumstances, if any, where one or more provisions of this Agreement are in conflict with provisions of the Nevada Revised Statutes that cannot be waived, the offending portions of the provision in this Agreement shall be interpreted so as to be consistent with the non-waivable sections of the Nevada Revised Statutes. To the extent such interpretation renders any portions of this Agreement ineffective, it is the intent of the parties that only such offending portion shall be so deemed, and the remainder of the provisions in this Agreement shall be of full force and effect.

15.7 Governing Law. This Agreement has been executed in, and shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

15.8 Survival. The provisions of this Agreement, including Contractor's covenants, representations, guaranties, releases, warranties and indemnities and the benefit thereof, shall survive as valid and enforceable obligations notwithstanding any termination, cancellation or expiration of the Contract, acceptance of the Work, Completion of the Work or completion of the Project, or any combination of them.

15.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.10 Unenforceability of this Agreement. If any term, provision, covenant or condition of this Agreement or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, such invalidity, voidness or unenforceability shall not impair, diminish, void, invalidate or affect in any way any other terms, provisions, covenants and conditions of this Agreement or any application thereof, all of which shall continue in full force and effect.

15.11 Dispute Resolution. This Agreement and all other Contract Documents shall be governed by the laws of the State of Nevada. Disputes between Owner and Contractor and relating to the Contract and/or the Work shall be resolved as follows: The parties shall first attempt to resolve disputes through direct negotiations in good faith. If a dispute cannot be settled through direct negotiations, then any party may submit the dispute for non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association by filing demand for mediation with the other party and with the American Arbitration Association, such mediation to occur in Las Vegas, Nevada or in such other place as the parties may mutually agree upon. Except for provisional remedies, no party may seek relief through any judicial or non-judicial forum until direct good faith negotiations and mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect has been pursued and the mediation was unsuccessful in resolving the dispute. Each party shall pay an equal, pro rata share of the mediation service's fees and costs and of the mediator's fees and costs. The mediation submission may be made concurrently with the filing of a complaint or other appropriate action or proceeding for relief, but, in such event, mediation shall proceed in advance of legal, equitable or other proceedings (other than those associated with provisional remedies) which shall be stayed pending mediation for a period not exceeding sixty (60) calendar days from the date of filing and service of the complaint or other action for relief, unless stayed for a longer period by mutual agreement of the parties or by court order. In the event of a dispute arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover the actual attorneys' fees reasonably incurred in prosecuting such dispute. In the event a dispute arises between Owner and Contractor, Contractor shall continue to perform in accordance with the Contract, without interruption or delay (subject to Owner's rights under the Contract).

15.12 Notices. Any notice, request, demand, instruction or other communication to be given under the Contract Documents, shall be in writing and shall be hand-delivered or sent by Federal Express or a comparable overnight or mail service, or sent by confirmed facsimile transmission or mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to Contractor or Owner, as the case may be at its address set forth below:

To Contractor:

Steve Smith, Project Manager
Bomel Construction Company, Inc.
3911 West Quail Avenue
Las Vegas, Nevada 89118
Telephone: (702) 798-1660
Facsimile: (702) 798-1665

and

Kent Matranga, President
Bomel Construction Company, Inc.
8195 East Kaiser Boulevard
Anaheim Hills, California 92808
Telephone: (714) 921-1660
Facsimile: (714) 921-4181

To Owner:

Kenn Wynn, President
Wynn Design and Development LLC
3145 Las Vegas Boulevard South

Las Vegas, Nevada 89109
Facsimile No.: (702) 733-4738
Telephone No. : (702) 733-4812

and

Todd Nisbet, Executive Vice President—Project Director
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No.: (702) 733-4715
Telephone No.: (702) 733-4497

Contractor shall concurrently with delivery to Owner provide to Owner's Lenders copies of all notices at an address or addresses to be provided, with copies to:

Pamela B. Kelly
Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, California 90071
Telephone No.: (213) 891-8726
Facsimile No.: (213) 891-8763

Notice will be deemed to have been given upon the earlier of receipt or, if made by Federal Express or confirmed facsimile, one business day after sending, or if made by U.S. Mail, three calendar days after sending. The addressees and addresses for the purpose of this paragraph may be changed by giving notice as provided in this Agreement; provided, however, that unless and until such written notice is actually received, the last addressee and address stated in this Agreement will continue in effect for all purposes.

15.13 Confidentiality. Owner considers all information (regardless of form) pertaining to the Project to be confidential and proprietary, including information which is prepared or developed by or through Contractor, Owner or Owner's other contractors, unless otherwise stated to Contractor in writing. Contractor shall not, and shall not allow, suffer or permit any Subcontractors or Vendors to, disclose any such information without Owner's prior written consent. Contractor shall obtain similar written agreements from each and every Subcontractor and Vendor as Owner may reasonably request. Contractor shall not issue any news releases or any other advertising pertaining to the Work or the Project, including advertising its participation in the Project, without obtaining Owner's prior written approval. Contractor hereby agrees not to use the name of Owner's Property or premises, or any variation thereof, or any logos used by Owner, in connection with any of Contractor's business promotion activities or operations without Owner's prior written approval. Contractor shall require its Subcontractors and Vendors to comply with the requirements imposed upon Contractor by this *Section 15.13*, including obtaining Owner's prior written consent to the form and content of any promotional or advertising publications or materials which depict or refer to their respective roles in providing Work for the Project. Neither Contractor nor any Subcontractor or Vendor shall post, erect or place on the Property, the Work, Owner's premises or the Project any sign, banner, billboard or display for marketing, advertising, promotional or other similar reasons, and no trade names or other identification shall appear on any item of the Work or at any place on the Project where such name or identification will be seen by the general public, except as approved in writing by Owner. The Contract Documents are the property of Owner and are for use solely with respect to the Work and are not to be used by Contractor or any Subcontractor on any other projects or for any other purpose, and all copies of the foregoing shall be returned or suitably accounted for to Owner upon Completion of the Work.

15.14 Legal Fees. The losing party shall promptly pay to the prevailing party all costs and reasonable attorneys' fees incurred in connection with any legal action, including mediation, in whole or in part, based on a breach of the Contract or other dispute arising out of or in connection with the Contract.

15.15 Third-Party Beneficiaries. Notwithstanding any provision of this Agreement to the contrary, no Subcontractor or Vendor shall be, or be considered to be, a third-party beneficiary of, or entitled to assert any rights under, this Agreement.

15.16 Statute Of Limitations. Notwithstanding any provision of the Contract Documents to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by Owner until after the date which, but for this Section, would be the date of the commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by Owner.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties to this Agreement have executed and delivered this Agreement as of the date and year hereinabove first set forth.

CONTRACTOR	**OWNER**
BOMEL CONSTRUCTION COMPANY, INC. **a California corporation**	**WYNN LAS VEGAS, LLC,** **a Nevada limited liability company**
By: /s/ Kent Matranga	By: Wynn Resorts, LLC, a Nevada limited liability company,

Its: President

its sole member

By: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

By: /s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Managing Member

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Exhibit 23.2

INDEPENDENT AUDITORS' CONSENT

We consent to the use in this Registration Statement of Wynn Resorts, Limited on Form S-1 of our report dated June 6, 2002, appearing in the Prospectus, which is part of this Registration Statement, and of our report dated June 6, 2002 relating to the financial statement schedule appearing elsewhere in this Registration Statement. We also consent to the reference to us under the headings "Selected Financial Data" and "Experts" in such Prospectus.

DELOITTE & TOUCHE LLP

Las Vegas, Nevada
June 12, 2002

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Exhibit 23.3

CONSENT OF PERSON NAMED TO BECOME A DIRECTOR

Pursuant to Rule 438 promulgated under the Securities Act of 1933, as amended, the undersigned hereby consents to be named as a person about to become a director of Wynn Resorts, Limited in the registration statement on Form S-1 of Wynn Resorts, Limited dated June 14, 2002 and any amendments thereto.

Signature

/s/ Kazuo Okada

Name: Kazuo Okada

Dated: June 5, 2002

CONSENT OF PERSON NAMED TO BECOME A DIRECTOR

Pursuant to Rule 438 promulgated under the Securities Act of 1933, as amended, the undersigned hereby consents to be named as a person about to become a director of Wynn Resorts, Limited in the registration statement on Form S-1 of Wynn Resorts, Limited dated June 14, 2002 and any amendments thereto.

Signature

/s/ Elaine P. Wynn

Name: Elaine P. Wynn

Dated: June 6, 2002

CONSENT OF PERSON NAMED TO BECOME A DIRECTOR

Pursuant to Rule 438 promulgated under the Securities Act of 1933, as amended, the undersigned hereby consents to be named as a person about to become a director of Wynn Resorts, Limited in the registration statement on Form S-1 of Wynn Resorts, Limited dated June 14, 2002 and any amendments thereto.

Signature

/s/ Robert J. Miller

Name: Robert J. Miller

Dated: June 5, 2002

CONSENT OF PERSON NAMED TO BECOME A DIRECTOR

Pursuant to Rule 438 promulgated under the Securities Act of 1933, as amended, the undersigned hereby consents to be named as a person about to become a director of Wynn Resorts, Limited in the registration statement on Form S-1 of Wynn Resorts, Limited dated June 14, 2002 and any amendments thereto.

Signature

/s/ Stanley R. Zax

Name: Stanley R. Zax

Dated: June 14, 2002

CONSENT OF PERSON NAMED TO BECOME A DIRECTOR

Pursuant to Rule 438 promulgated under the Securities Act of 1933, as amended, the undersigned hereby consents to be named as a person about to become a director of Wynn Resorts, Limited in the registration statement on Form S-1 of Wynn Resorts, Limited dated June 14, 2002 and any amendments thereto.

Signature

/s/ Ronald J. Kramer

Name: Ronald J. Kramer

Dated: June 14, 2002

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